

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 300. 54.

T. B. MERRILL, AS RECEIVER OF THE FIRST NATIONAL  
BANK OF PALATKA, APPELLANT,

v.

THE NATIONAL BANK OF JACKSONVILLE

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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FILED FEBRUARY 4, 1897.

(16,486.)

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## INDEX.

	Original.	Print.
Caption .....	a	1
Transcript from United States circuit court, southern district of Florida .....	1	1
Bill of complaint .....	1	1
Subpoena and marshal's return .....	8	5
Order taking bill <i>pro confesso</i> and praecipe for entry of same .....	11	6
Demurrer .....	12	7
Setting down demurrer .....	15	8
Order overruling demurrer .....	16	8
Answer .....	17	9
Exceptions to answer .....	21	11
Setting down exceptions for argument .....	30	15
Notice to hear exceptions .....	31	16
Order overruling exceptions to answer .....	32	16
Notice setting down case on bill and answer .....	32	17

	Original.	Print.
Decree .....	33	17
Assignment of error .....	36	18
Claim of appeal and order .....	37	19
Citation and marshal's return .....	39	20
Clerk's certificate .....	40	20
Hearing and submission .....	42	21
Decree .....	42	21
Petition and order allowing appeal .....	43	22
Opinion .....	44	22
Certificate .....	56	30
Citation .....	57	30
Proof of service of citation .....	58	31

a United States Circuit Court of Appeals, Fifth Circuit, November Term, 1895.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun, pursuant to law, on the third Monday of November, 1895, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, and the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Emory Speer, United States district judge for the southern district of Georgia.

T. B. MERRILL, Receiver, Appellant,  
vs. } No. 486.  
THE NATIONAL BANK OF JACKSONVILLE, Appellee.

Be it remembered that heretofore, to wit, on the ninth day of April, 1896, a transcript of the record of the above-styled cause from the circuit court of the United States for the southern district of Florida, was filed in the office of the clerk of the United States circuit court of appeals for the fifth circuit, in the words and figures following, to wit:

1 In United States Circuit Court, Fifth Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complain- }  
ant, }  
vs. } In Chancery.  
T. B. MERRILL, as Receiver of the First National }  
Bank of Palatka, Defendant.

*Bill.*

The National Bank of Jacksonville, a corporation under the laws of the United States of America, and having its place of business at Jacksonville, Florida, brings this its bill of complaint, for itself and all other persons in like situation, who shall come in and make themselves parties to this suit, and contribute to the expenses thereof, against T. B. Merrill, as receiver of the First National Bank of Palatka, a corporation under the laws of the United States of America, and heretofore doing business at Palatka, in the State of Florida.

And thereupon, your orator complains and says as follows: That your orator is a corporation under the laws of the United States of America, and having its place of business at Jacksonville, in the State of Florida, where it was at the times hereinafter mentioned, and is now engaged in conducting the business of a national bank.

2 That the First National Bank of Palatka is a corporation under the laws of the United States of America, having its

place of business at Palatka, Florida, where, prior to the 17th day of July, A. D. 1891, it was engaged in conducting the business of a national bank.

That on the 17th day of July, A. D. 1891, the said First National Bank of Palatka failed, and closed its doors, and the Hon. E. S. Lacy, as comptroller of the United States of America, subsequent to said last-mentioned date, appointed this defendant, to wit: the said T. B. Merrill, as receiver of the First National Bank of Palatka, and the said receiver took charge of the said banking business, theretofore conducted by said First National Bank of Palatka, and all of the books, notes, accounts, property and effects of said First National Bank of Palatka.

That this court has jurisdiction of the parties to and their subject-matter to this suit; that this is a suit of a civil nature in equity; that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arises under the laws of the United States of America.

That at the time of the failure of the First National Bank of Palatka it was indebted to your orator for sundry drafts of said bank to the order of your orator on the Hanover National Bank of New York, amounting, with fees, to \$6,010.47 (six thousand and ten and  $\frac{47}{100}$  dollars), which said indebtedness was unsecured by collateral.

And said First National Bank of Palatka was further indebted to your orator at the time of its failure in the sum of ten thousand dollars (\$10,000.00), and interest, for a loan made said 3 bank by your orator on June 5th, A. D. 1891; that at the time said loan was made the said First National Bank of Palatka delivered to your orator their time certificate of deposit, No. 6120, due in sixty days from date, bearing interest at eight per cent., to which said bank attached, as collateral security, sundry notes belonging to said First National Bank of Palatka, to wit:

St. James on Gulf.....	\$1,000 00
R. H. Mason.....	250 00
T. V. Hinks.....	300 00
G. U. Beach.....	300 00
G. U. Beach.....	2,000 00
The Florida Commercial Co.....	396 90
A. B. Mason.....	1,300 00
A. L. Hart.....	5,350 22

Total..... \$10,896 22

The total indebtedness due to your orator from the First National Bank of Palatka on the day of its failure was:

For sundry drafts..... \$6,010 47  
For certificate of deposit, loan and interest..... 10,093 34

Total amount due..... \$16,103 81

Making a total of sixteen thousand, one hundred and three and  $\frac{81}{100}$  dollars (\$16,103.81) due to your orator from the First National Bank of Palatka on the 17th day of July, A. D. 1891.

4 That your orator proved its claim, in due form of law, before said receiver aforesaid, for six thousand and ten and  $\frac{47}{100}$  dollars, being amount of drafts due to your orator from said First National Bank of Palatka, and upon which said amount so proven your orator has received distributions as follows:

December 10th, 1892, 35 % .....	\$2,103 67
May 17th, 1893, 10 % .....	601 05
<hr/>	
Total.....	\$2,704 72

That in addition to proving the amount of \$6,010.47 due on sundry drafts aforesaid, your orator offered to prove up its claim for \$10,000.00, being amount of certificate of deposit secured by collateral, as aforesaid, but the said defendant receiver would not permit your orator to prove the total amount of \$10,000.00 and interest due thereon for said loan as aforesaid, but under the ruling of the comptroller of the United States of America, your orator was not allowed to prove its claim in full before the defendant receiver, but was ordered to first exhaust the collateral given to secure said loan for \$10,000.00, as aforesaid, and then to prove the claim for the difference between the amount of the loan and interest, and the amount realized from said collateral.

Under the ruling of the comptroller your orator collected all of the notes given as collateral to secure said loan of \$10,000.00, except the note of H. L. Hart, for five thousand, three hundred and fifty and  $\frac{12}{100}$  dollars; which last-mentioned note was placed in judgment, and which judgment was non-productive, and which 5 said judgment has been assigned and transferred by your orator to the defendant herein as receiver, as aforesaid.

That after exhausting the collateral your orator proved its claim for the balance due on said certificate of deposit for \$10,000.00, so secured by said collateral, as aforesaid, to wit: for the sum of four thousand four hundred and ninety-six and  $\frac{44}{100}$  dollars, upon which said balance of \$4,496.44 your orator has received the following dividends from the defendant receiver, to wit:

December 1st, 1892.....	\$1,573 75
May 17th, 1893.....	449 64
<hr/>	
Total.....	\$2,033 39

That the defendant should have allowed your orator to have proven its entire claim of \$16,103.81, and to have received *pro rata* dividends upon the entire amount thereof.

That your orator is informed and believes, and upon such information and belief so charges the truth to be, that the same rule was applied as to other creditors of the said First National Bank of Palatka, and that it was an erroneous and illegal manner of de-

claring a dividend. That your orator gave due notice that it would demand a *pro rata* dividend upon the whole amount due your orator, without deducting the amount collected on collateral security, to wit: that it would demand a *pro rata* dividend upon \$16,103.81, and interest thereon from the 17th day of July, A. D. 1891.

That your orator does not know, without a discovery, what amount of assets the defendant, as such receiver, did receive, and what disposition he made of them, or what amount your  
6 orator is justly entitled to receive under the distribution by the receiver herein, and that an accounting is necessary to ascertain the same.

That there has been great delay in winding up the matters of said First National Bank of Palatka by said receiver.

That the defendant has made no distribution of the assets of said bank since the 17th day of May, A. D. 1893.

All of which actings and doing are contrary to equity. To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby and herein prayed; and may, upon his corporal oath, and according the utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters herein set forth, as if particularly interrogated thereunto.

And your orator prays as follows:

That the defendant may discover the amount of assets of said First National Bank of Palatka that came into his hands, and account for the same, and that the defendant may be decreed to pay to your orator (and to all other creditors of said First National Bank of Palatka in like situation, who may come in and make themselves parties to this suit, and contribute to the expenses thereof) a *pro rata* distribution upon the entire amount of indebtedness due to your orator from the said First National Bank of Palatka, to wit: upon the sum of sixteen thousand one hundred and three and  $\frac{81}{100}$  dollars, together with interest thereon from the 17th day  
7 of July, A. D. 1891, without deducting therefrom the amount realized from collateral given to secure a portion of said amount due your orator from said bank as aforesaid.

That the defendant may wind up the affairs of said bank and of his said receivership thereof, without further delay.

And that your orator may have such other and further relief in the premises as to your honor may seem meet, and the necessities of this case may require, and as shall be agreeable to equity.

May it please your honor to grant unto your orator the writ of subpoena of the United States of America, issuing out of and under the seal of this honorable court, to be directed to the defendant, T. B. Merrill, as receiver of the First National Bank of Palatka, a corporation incorporated under the laws of the United States of America, commanding him, at a certain time, and under a certain penalty, to be therein limited, personally to be and appear before this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to

stand to, perform and abide such further order, direction and decree herein as to this honorable court may seem meet.

COOPER & COOPER,  
*Solicitors for Complainant.*

(Endorsed:) In United States circuit court, fifth circuit, in and for southern district of Florida. In chancery. National Bank of Jacksonville vs. T. B. Merrill, receiver. Filed Sept. 11, 1894. E. O. Locke, clerk. Bill. Cooper & Cooper, solicitors for complainant.

8        UNITED STATES OF AMERICA,     }  
                  *Southern District of Florida.*     }

The President of the United States of America to T. B. Merrill, as receiver of the First National Bank of Palatka, a corporation incorporated under the laws of the United States of America:

We command you, and every one of you, that you appear before the judges of the circuit court of the United States of America, for the fifth circuit and southern district of Florida, at Jacksonville, in said district, on the first Monday, being the fifth day of November next, to answer to a bill of complaint exhibited against you by the National Bank of Jacksonville, a corporation under the laws of the United States of America, and having its place of business at Jacksonville, Florida, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

9        Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of [SEAL.] this court, at the city of Jacksonville in said district, this eleventh day of September, A. D. 1894.

E. O. LOCKE, *Clerk,*  
By N. A. GREENING, *D. C.*

COOPER & COOPER,  
*Solicitors for Complainant.*

#### *Memorandum.*

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

E. O. LOCKE, *Clerk,*  
By N. A. GREENING, *D. C.*

Received the within writ on the 11th day of September, A. D. 1894, at Jacksonville, Florida, and executed the same by delivering a true copy hereof to T. B. Merrill, as receiver of the First National

Bank of Palatka, at the same time exhibiting to him this original, at Palatka, Florida, on September 14th, A. D. 1894.

JAMES MCKAY,  
U. S. Marshal.

10 No. 112. Circuit court United States, southern district of Florida. The National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Chancery subpoena. Returnable to rule day, first Monday in November, A. D. 1894. E. O. Locke, clerk, by N. A. Greening, D. C. Filed September 14, A. D. 1894. E. O. Locke, clerk, Cooper & Cooper, complainant's solicitors.

11 In the United States Circuit Court, Fifth Judicial Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, a Corporation under the Laws of the United States of America, Complainant,

*vs.*

T. B. MERRILL, as Receiver of the First National Bank of Palatka, a Corporation under the Laws of the United States of America, Defendant.

} In Chancery.

Now comes the complainant in the above-stated cause, by Cooper & Cooper, its solicitors, on this the rule day in November, 1894, being the rule day next succeeding the appearance day in said cause, and the said defendant above named in above-entitled cause having failed to file plea, demurrer or answer to complainant's said bill of complaint, on the said rule day, and the said defendant aforesaid being in default thereof, the said complainant now elects to enter its order (as of course) in the order book that its bill be taken *pro confesso*, and the said complainant does now enter said order that its said bill and all its allegations be taken as confessed by the said defendant above named in above-stated cause.

Let the defendant aforesaid take notice that as of its right the complainant will proceed *ex parte* in said cause.

COOPER & COOPER,  
*Solicitors for Complainant.*

12 The clerk of said above-named court will please enter the above order in the order book.

COOPER & COOPER,  
*Solicitors for Complainant.*

(Endorsed :) In the United States circuit court, fifth judicial circuit, in and for the southern district of Florida. In chancery. National Bank of Jacksonville, complainant, *vs.* T. B. Merrill, receiver, defendant. Order taking bill *pro confesso* and preceipe for entry of same. Filed Nov. 5, 1894. E. O. Locke, clerk. Cooper & Cooper, solicitors for complainant.

In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE  
 vs.  
 T. B. MERRILL, as Receiver of the First National  
 Bank of Palatka. } In Chancery.

The demurrer of T. B. Merrill, as receiver of the First National Bank of Palatka, to the bill of complaint of The National Bank of Jacksonville, the above-named plaintiff.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is herein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth—

13 First. That the said bill does not contain any matter of equity whereon this court can ground any decree or give any relief against this defendant.

Second. Because the complainant seeks to make proof of its claim without deducting amounts collected by it from collateral securities prior to making proof, and further seeks to compel the defendant to pay it ratably in proportion with other creditors on a basis of the gross amount of indebtedness without crediting the collections from said collateral securities.

Third. Because the complainant is estopped in equity from making new proof, having made proof according to law and received dividends upon the basis of the said proof.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JOHN WURTS AND  
 E. E. HASKELL,  
*Counsel for Defendant.*

14 STATE OF FLORIDA, }  
 County of Putnam. }

Personally appeared before me this day T. B. Merrill, who being first duly sworn, says that he is the defendant who files the foregoing demurrer and that the same is not interposed for delay.

T. B. MERRILL.

Sworn to and subscribed before me this 22d day of November, 1894.

COOK CARLETON,  
*Notary Public, State of Florida at Large.*

[SEAL.]

In my opinion the foregoing demurrer is well founded in point of law.

JOHN WURTS,  
E. E. HASKELL,  
*Of Counsel for the Defendant.*

(Endorsed :) In circuit court of U. S., sou. dist. of Florida. In chancery. Nat. Bank of Jac. *vs.* T. B. Merrill. Demurrer. Filed Nov. 26, 1894. E. O. Locke, clerk. Overruled June 26, 1895. E. O. Locke, clerk.

15 In United States Circuit Court, Fifth Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant,      }  
                            *vs.*      }  
T. B. MERRILL, as Receiver of the First National      }  
Bank of Palatka, Defendant.      } In Chancery.

Now on this day comes the complainant in the above-stated cause and sets down for argument on the 7th day of January, A. D. 1895, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the demurrer of the defendant to the bill of complaint in the said above-entitled cause.

COOPER & COOPER,  
*Solicitors and of Counsel for Complainant.*

(Endorsed :) In United States circuit court, fifth circuit, in and for southern district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill, as receiver. Filed January 7, 1895. E. O. Locke, clerk. Setting down of demurrer. Cooper & Cooper, solicitors for complainants.

16 In U. S. Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE      }  
                            *vs.*      }  
T. B. MERRILL, as Receiver, &c.      }  
                            *vs.*

This cause coming on to be heard on the demurrer of defendant to the bill and having been argued by counsel, it is ordered and adjudged that said demurrer be and same is hereby overruled, and defendant given until rule day in August, 1895.

June 25, 1895.

JAMES W. LOCKE, *Judge.*

(Endorsed :) National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Decree overruling demurrer. Filed June 26, 1895. E. O. Locke, clerk.

17 In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE  
vs.  
T. B. MERRILL, as Receiver, etc. } In Chancery.

The answer of T. B. Merrill, as receiver of The First National Bank of Palatka, the defendant, to the bill of complaint of The National Bank of Jacksonville, the complainant.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

### I.

That this defendant has never made or declared any dividend to the creditors of the First National Bank of Palatka; on the contrary thereof, this defendant says that he was made receiver of the said bank by appointment of the United States Comptroller of the Currency under section 5234 of the Revised Statutes, and that since his said appointment he has paid over to the said comptroller all moneys derived by him from the assets of the said bank in accordance with

the terms of the said law, and that the *appointment* to the  
18 complainant and the dividend thereunder set forth in the

bill of complaint were made by the said comptroller, and this defendant had nothing whatever to do therewith, except to transmit to the complainant the checks of the said comptroller representing the said payments, which said payments were made in pursuance of the provisions of section 5236 of the Revised Statutes, and that this defendant has not, and cannot have any authority to make disbursements to any of the creditors of the said bank, nor has he in his hands any funds which are available for that purpose; on the contrary thereof this defendant is charged under the law of his appointment with the duty of transmitting to the comptroller all moneys realized from the assets of the said bank.

### II.

And further answering the said bill this defendant denies that the complainant gave due notice that it would demand a *pro rata* dividend upon the whole amount due to it without deducting the amount collected on collateral security; on the contrary thereof this defendant avers the fact to be that the complainant accepted the said ruling of the said comptroller without demur and accepted from the said comptroller, through this defendant, without protesting notice of any kind, the checks of the said comptroller in payment of the dividends mentioned in the bill, and that it was not until the 15th of March, 1894, that the complainant gave notice of any kind that it dissented from the said ruling of the comptroller

and would demand payment upon a different basis; that since December 1st, 1892, the said comptroller has made disposition of the assets of the said bank in his hands in good faith, believing  
 19 that the matter of his said ruling was at rest; so that the complainant should now be estopped to demand an apportionment on a different basis.

## III.

And further answering the said bill this defendant says that he has realized in money from the assets of the said bank the sum of \$176,317.91; that under the orders of the said comptroller he has disbursed the sum of \$31,561.33 for the expenses of his receivership, "in which expenses are included moneys paid on decree in litigated case in this court, and for loans paid, etc., amounting to the sum of \$17,653.55;" that he has transmitted to the said comptroller, as required by law, the sum of \$143,849.03; that there remains in the hands of this defendant the sum of \$907.55, which is subject exclusively to the orders of the said comptroller, and that the remaining assets of the said bank consist of sundry parcels of real property and some securities and choses in action, many of which are absolutely worthless, and the value of the rest of which cannot be estimated.

## IV.

And further answering the said bill this defendant denies that there has been great, or any, delay in winding up the matters of the said bank; on the contrary thereof, the assets of the said bank have been realized upon with the utmost expedition consistent with the character of the same, and the great business depression which has existed in Florida since this defendant took charge of the affairs of the said bank. Moreover, this defendant, in all matters concerning the management of the assets of the said bank, has acted  
 20 strictly in accordance with instructions received from the Comptroller of the Currency.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of this defendant; all of which matters and things this defendant is willing and ready to aver and prove as this honorable court shall direct; and humbly prays to be hence discharged with his reasonable costs and charges, in this behalf most wrongfully sustained.

T. B. MERRILL,  
*Receiver of the First National Bank of Palatka.*

FLETCHER & WURTS AND  
E. E. HASKELL,  
*Defendant's Counsel.*

STATE OF FLORIDA, }  
 County of Putnam. }

Personally appeared before me this day T. B. Merrill, who, being first duly sworn, says that he is the defendant who files the foregoing answer; that he has read the said answer, and knows the statements therein made, and that the same are true in so far as they are alleged as true; and in so far as they are alleged on 21 information and belief, he is informed that they are true, and he believes them to be true.

T. B. MERRILL.

Sworn to and subscribed before me this 18th day of July, 1895.

[SEAL.]

D. M. KIRBY,  
*Notary Public.*

(Endorsed:) In circuit court of the United States, southern district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Answer. Filed Aug. 5th, 1895. N. A. Greening, D. C. Fletcher & Wurts, attorneys for defendant.

In United States Circuit Court, Fifth Circuit, in and for Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, a Corporation under the Laws of the United States of America, Complainant, *vs.* T. B. MERRILL, as Receiver of the First National Bank of Palatka, Defendant. } In Chancery.

*Exceptions Taken by the Above-named Complainant to the Answer of the Defendant for Insufficiency.*

22 First exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information and belief answered and set forth whether the complainant is a corporation under the laws of the United States of America, and having its place of business at Jacksonville, in the State of Florida, and as to whether or not it was at the times mentioned in the bill of complaint, and is now engaged in conducting the business of a national bank.

Second exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information, and belief, answered and set forth whether the First National Bank of Palatka is a corporation under the laws of the United States of America, having its place of business at Palatka, Florida, where, prior to the 17th day of July, A. D. 1891, it was engaged in conducting the business of a national bank.

Third exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether, on the 17th day of July, A. D. 1891,

the said First National Bank of Palatka, failed, and closed its doors and whether the Hon. E. S. Lacy, as comptroller of the United States of America, subsequent to said last-mentioned date, appointed this defendant, to wit: the said T. B. Merrill, as receiver of the First National Bank of Palatka, and whether or not the said receiver took charge of the said banking business theretofore conducted by said First National Bank of Palatka, and all of the books, notes, accounts, property and effects of said First National Bank of Palatka.

23 Fourth exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether this court has jurisdiction of the parties and the subject-matter of this suit, and whether this is a suit of a civil nature in equity, and whether or not the matter in dispute exceeds, exclusive of interest and cost, the sum or value of two thousand dollars, and whether or not the same arises under the laws of the United States of America.

Fifth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, at the time of the failure of the First National Bank of Palatka, it was indebted to your orator, the complainant herein, for sundry drafts of said bank, to the order of your orator, on the Hanover National Bank of New York, amounting, with fees, to \$6,010.47, and whether or not said indebtedness was unsecured by collateral.

Sixth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the First National Bank of Palatka was further indebted to your orator, the complainant herein, at the time of its failure, in the sum of \$10,000.00, and interest, for a loan made said bank by your orator, on June 5th, 1891, and whether, at the time of said loan was made the said First National Bank of Palatka delivered to your orator their time certificate of deposit, No. 6120, due sixty days from date, bearing interest

24 at eight per cent., to which said bank attached, as collateral security, sundry notes belonging to said First National Bank of Palatka, to wit:

St. James on Gulf .....	\$1,000 00
R. H. Mason .....	250 00
T. V. Hinks .....	300 00
G. U. Beach .....	300 00
G. U. Beach .....	2,000 00
The Florida Commercial Co. ....	396 90
A. B. Mason .....	1,300 00
A. L. Hart .....	5,350 22
 Total .....	 \$10,896 22

Seventh exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the total indebtedness due to your orator, the complainant in this cause, from the First National Bank of Palatka, on the day of its failure, was:

For sundry drafts . . . . .	\$6,010 47
For certificate of deposit, loan and interest . . . . .	10,093 34
<b>Total amount due . . . . .</b>	<b>\$16,103 81</b>

Making a total of \$16,103.81 due to your orator from the First National Bank of Palatka on the 17th day of July, A. D. 1891.

Eighth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether your orator proved its claim in the due form of law before said receiver aforesaid, for \$6,010.47, being amount of drafts due to your orator from 25 said First National Bank of Palatka, and whether, upon which said amount so proven, your orator has received distribution, as follows:

December 10, 1892, 35% . . . . .	\$2,103 67
May 17th, 1893, 10% . . . . .	601 05
<b>Total . . . . .</b>	<b>\$2,704 72</b>

Ninth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, in addition to proving the amount of \$6,010.47 due on sundry drafts as aforesaid, your orator offered to prove up its claim for \$10,000.00, being amount of certificate of deposit secured by collateral as aforesaid, and whether the said receiver would not permit your orator to prove the total amount of \$10,000.00 and interest due thereon for said loan, as aforesaid, and whether, under the ruling of the comptroller of the United States of America, your orator was not allowed to prove its claim in full before the defendant receiver, and whether it was ordered to first exhaust the collateral given to secure said loan for \$10,000.00, as aforesaid, and then to prove the claim for the difference between the amount of the loan and interest and the amount realized from said collateral.

Tenth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, under the ruling of the comptroller, your orator collected all of the notes given as collateral to secure said loan of \$10,000.00, except the note of H. L. Hart, for \$5,350.22, and whether said last-mentioned note was placed in judgment, and whether said judgment was non-productive, and whether said judgment has been assigned and transferred by your orator to the defendant herein, as receiver, as aforesaid.

26 Eleventh exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, after exhausting the collateral, your orator proved its claim for the balance due on said certificate of deposit for \$10,000.00, so secured by said collateral as aforesaid, to wit: for the sum of \$4,496.44, and whether, upon said balance of \$4,496.44, your orator has received the following dividends from the defendant receiver, to wit:

December 1st, 1892 . . . . .	\$1,573 75
May 17th, 1893 . . . . .	449 64
<b>Total . . . . .</b>	<b>\$2,033 39</b>

Twelfth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the defendant should have allowed your orator to have proven its entire claim of \$16,103.81, and to have received *pro rata* dividends upon the entire amount thereof.

Thirteenth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the same rule was applied as to other creditors of the said First National Bank of Palatka, and whether it was an illegal and erroneous manner of declaring a dividend.

Fourteenth exception. For that the defendant has not, in manner aforesaid, answered and set forth what amount of assets the defendant, as such receiver, did receive, and what disposition he made of them, or what amount your orator is justly to receive under the distribution by the receiver herein, and whether an accounting is necessary to ascertain the same.

27 Fifteenth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the defendant has made distribution of the assets of said bank since the 17th day of May, A. D. 1893.

Sixteenth exception. For that the defendant has not, in manner aforesaid, discovered the amount of assets of said First National Bank of Palatka, that came into his hands, and accounted for the same.

The said portion of defendant's answer, purporting to be an answer thereto, being in words and figures as follows:

### "III.

"And further answering the said bill, this defendant says that he has realized in money from the assets of the said bank the sum of \$176,317.91; that under the order of the said comptroller he has disbursed the sum of \$31,561 $\frac{3}{4}$ ; for the expenses of his receivership," in which expenses are included moneys paid on decree in litigated case in this court, and for loans paid, etc, amounting to sum of \$17,653.55; that he has transmitted to the said comptroller, as required by law, the sum of \$143,849.03; that there remains in the hands of this defendant the sum of \$907.55, which is subject exclusively to the orders of the said comptroller; and that the remaining assets of the said bank consists of sundry parcels of real property and some securities and choses in action, many of which are absolutely worthless, and the value of the rest of which cannot be estimated."

In all which particulars the complainant excepts to the answer of the defendant, T. B. Merrill, as receiver of the First National 28 Bank of Palatka, as evasive, imperfect and insufficient, and prays that the defendant may be compelled to put in a full and sufficient answer thereto.

Seventeenth exception. This complainant further excepts to so much of the complainant's answer as is contained in the second paragraph thereof, commencing with the words, "on the contrary

thereof," and ending with the words, "upon a different basis," on the grounds that the same constitutes no defence, and upon the ground that even admitting the allegation of the answer to be true, same would have no bearing upon the fund undisbursed, in this trust matter, and that the same is impertinent.

Eighteenth exception. The complainant further excepts to so much of the second paragraph of defendant's answer as is contained therein, commencing with the words, "that since December 1st, 1892," and ending with the words, "was at rest," and to so much of the second paragraph in the said answer, commencing with the words, "so that," and ending with the words "basis," at the end of said second paragraph, on the grounds that the same constitutes no defence, and on the further grounds that, admitting the same to be true, same would have no bearing upon the fund undistributed, and that the same is impertinent.

Nineteenth exception. The complainant further excepts to so much of the said answer as is contained in the third paragraph of defendant's said answer, on the ground that the same is not a full and complete discovery of the assets of said bank received by said receiver; that the same is not responsive to the allegations of the bill; is vague, and indefinite, and impertinent.

29 Twentieth exception. This complainant further excepts to so much of the fourth paragraph of the defendant's answer commencing with the words, "Moreover, -his defendant," and ending with the word, "currency," at end of said paragraph, on the grounds that the same is not responsive to the allegations of the bill, and that the same constitutes non-defence to the bill, and is impertinent. In all which particulars the complainant excepts to the said answer as impertinent and insufficient, and insists that the same ought to be expunged from said answer.

JOHN C. COOPER,  
*Solicitor for Complainant.*

(Endorsed:) In United States circuit —, fifth circuit, in and for southern district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Filed this 2d day of Sept., A. D. 1895. E. O. Locke, clerk. Exceptions to answer. Cooper & Cooper.

30 In United States Circuit Court, Fifth Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE

*vs.*

T. B. MERRILL, as Receiver of the First National Bank of Palatka, Defendant } In Chancery.

Now, on this the rule day in October, A. D. 1895, comes the complainant in the above-stated cause, and sets down for argument before his honor the judge of the above-stated court, on Monday, November 4th, A. D. 1895, at 10 o'clock a. m., or as soon thereafter

as counsel can be heard, the exceptions filed on the 2d day of September, A. D. 1895, to the answer of the defendant to the bill of complaint in the above-stated cause.

J. C. COOPER,  
*Solicitor for Complainant.*

(Endorsed:) In the United States circuit court, fifth circuit, in and for *northern* district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill. Filed Oct. 7th, 1895. E. O. Locke, clerk. Setting down of exceptions for argument. Cooper & Cooper.

31 In the United States Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE }  
vs.  
T. B. MERRILL, as Receiver, etc. }

The defendant and his solicitors will please take notice that on Monday, the 23d day of December, A. D. 1895, at 10 a. m., or as soon thereafter as counsel can be heard, I will call up before the said court for a hearing the exceptions to the defendant's answer in the above-stated cause.

J. C. COOPER,  
*Solicitor for Plaintiff.*

Service accepted December 3d, 1895.

FLETCHER & WURTS,  
*Solicitors for Defendant.*

(Endorsed:) In the United States circuit court, fifth circuit, in and for southern district of Florida. The National Bank of Jacksonville *vs.* T. B. Merrill, as receiver, etc. Filed this 4th day of December, A. D. 1895. E. O. Locke, clerk. Notice to hear exceptions. J. C. Cooper, attorney for plaintiff.

32

THURSDAY, January 9th, 1896.

Present: Hon. Jas. W. Locke, district judge.  
Ordered that court be opened.  
And court is opened by due proclamation.

NATIONAL BANK OF JACKSONVILLE }  
vs.  
T. B. MERRILL, Receiver. }

Ordered, that the exceptions to the answer herein be overruled, without prejudice to an amendment of the prayer of the bill asking that the receiver be instructed to certify to the comptroller the proof of the claim as desired.

\* \* \* \* \*

In the United States Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE  
 vs.  
 T. B. MERRILL, as Receiver of the First National  
 Bank of Palatka. } In Chancery.

Now comes the complainant, by its solicitor, and sets down this cause for final hearing upon the bill and answer filed herein, January 29th, 1896.

J. C. COOPER,  
*Solicitor for Complainant.*

33 (Endorsed :) In United States circuit court, fifth circuit, in and for southern district of Florida. National Bank of Jacksonville *vs.* T. B. Merrill, as receiver. Filed this 29th day of January, A. D. 1896. N. A. Greening, deputy clerk. Notice setting down case on bill and answer. J. C. Cooper.

In the United States Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE  
 vs.  
 T. B. MERRILL, as Receiver of the First National  
 Bank of Palatka. } In Chancery.

This cause having been set for final hearing upon the bill and answer herein, and having been argued by counsel, and the court having considered of its decree,

It is ordered, adjudged and decreed, that the complainant is entitled to receive from the assets of the said First National Bank of Palatka a distributive share and dividend as one of the creditors of said bank, based upon, and to be calculated upon the whole amount of the indebtedness due said complainant from said bank, principal and interest, to wit: upon the basis of the sum of sixteen thousand one hundred and three and eighty-one one-hundredths dollars (\$16,103.81), as the amount of the indebtedness due complainant on July 17th, 1891, with interest thereon from July 17th, 1891,

34 and crediting thereon as partial payments the dividends heretofore paid on the dates of their several payments.

It is further ordered, adjudged and decreed, that the said defendant, as receiver, declare the dividend to be due to complainant upon the said basis of its said claim, as above stated, and that said amount of such dividend should be paid out of any assets of the defendant bank which were in the hands of the said defendant, as receiver, on the 15th day of March, 1894, or came into his hands since the said 15th day of March, 1894, after the payment out of such assets of any costs and expenses of such receivership as may have remained unpaid since the 15th day of March, 1894.

It is further ordered, adjudged and decreed, that the said defendant, as such receiver, do declare said dividend as payable to the said complainant, and do pay said complainant the amount of such

dividend out of any assets that were in the hands of said receiver on the 15th of March, 1894, or may have come into his hands since the 15th day of March, 1894, after deducting from said assets the costs and expenses of said receivership due on that date or accruing since.

It is further ordered, adjudged and decreed, that the said defendant, as receiver of said First National Bank of Palatka, do file within thirty days, in this cause in this court, an account showing the amount of assets in his hands on the 15th day of March, 1894, and received by him out of the assets of said bank since the 15th day of March, 1894, and the expenditures out of same for the expenses and management of such receivership, as hereinbefore mentioned,

35 and that the amount due to the complainant upon the dividends to it, as a creditor of said bank, upon the basis hereinbefore decreed, shall be paid to said complainant out of such balance of such assets as were in the hands of said receiver on the 15th day of March, 1894, aforesaid, and have been received by him since the 15th of March, 1894.

It is further ordered, that the costs in this cause be paid by the complainant and defendant, each to pay one-half of same.

Done and ordered in open court, this 29th day of January, A. D. 1896.

JAMES W. LOCKE, Judge.

(Endorsed:) In the United States circuit court, fifth circuit, in and for southern district of Florida. National Bank of Jacksonville vs. T. B. Merrill, as receiver, etc. Filed January 29, 1896. E. O. Locke, clerk. Order, decree.

36 In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant, }  
 vs. } In Equity.  
 T. B MERRILL, Receiver, Defendant. }

*Assignment of Error on Appeal.*

And now on this 14th day of March, A. D. 1896, comes the defendant, T. B. Merrill, receiver, by Fletcher & Wurts, his solicitors, and says that the decree in said cause is erroneous and against the just rights of said defendant for the following reasons :

First. Because the court erred in rendering the decree overruling the defendant's demurrer to the bill of complainant herein.

Second. Because the court erred in rendering the final decree herein. (a) Because the said decree herein requires the defendant to declare and pay dividends, whereas the law does not vest receivers of national banks with authority to either declare or pay dividends. (b) Because said final decree requires the defendant to file an account showing the assets in his hands, and his expenditures, which order is beyond the power of said court to enforce.

37 Wherefore the said defendant prays that the said decree be reversed, and that the said court may be directed to enter a decree dismissing said bill.

FLETCHER & WURTS,  
*Solicitors for Defendant.*

(Endorsed:) In circuit court of the United States, southern district of Florida. In equity. National Bank of Jacksonville, complainant, *vs.* T. B. Merrill, receiver, defendant. Assignment of error. Filed March 16, 1896. N. A. Greening, D. C. .

In the Circuit Court of the United States for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant, }  
vs. } In Equity.  
T. B. MERRILL, Receiver, Defendant. }

The above-named defendant, conceiving himself aggrieved by the decree made and entered on the 29th day of January, 1896, in the above-entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the fifth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which 38 said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit.

FLETCHER & WURTS,  
*Attorneys for Defendant, Jacksonville, Fla.*

March 3rd, 1896.

The foregoing claim of appeal is allowed, and the same being taken by order of the Comptroller of the Currency, it is ordered that said appeal shall operate as a supersedeas, without bond.

Done and ordered at chambers, at Key West, Florida, this 14th day of March, A. D. 1896.

JAMES W. LOCKE, *Judge.*

Endorsed: In circuit court of the United States for the southern district of Florida. In equity. The National Bank of Jacksonville, complainant, *vs.* T. B. Merrill, receiver, defendant. Claim of appeal and order. Filed March 16th, 1896. N. A. Greening, D. C.

39 In the United States Circuit Court of Appeals for the Fifth Circuit.

T. B. MERRILL, Receiver, Appellant,  
*vs.*  
 THE NATIONAL BANK OF JACKSONVILLE, Respondent. } In Equity.

THE UNITED STATES OF AMERICA, } ss.  
*Fifth Judicial Circuit.*

To the National Bank of Jacksonville, a corporation organized and existing under the laws of the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit — of appeals for the fifth circuit, to be holden at the city of New Orleans in said circuit, on the 13th day of April next, pursuant to an appeal allowed herein and filed in the clerk's office of the circuit court of the United States for the southern district of Florida, wherein T. B. Merrill, receiver, is appellant, and you are respondent, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 14th day of March, in the year of our

40 Lord one thousand eight hundred and ninety-six.

JAMES W. LOCKE,  
*U. S. Judge.*

(Endorsed:) In the United States circuit court of appeals for the fifth circuit, State of Florida. In equity. T. B. Merrill, receiver, appellant, *vs.* The National Bank of Jacksonville, respondent.

Received this citation at Jacksonville, Fla., on March 17, 1896, and executed it by serving a true copy on W. B. Barnett, president of the National Bank of Jacksonville, at Jacksonville, Fla., on March 18, 1896, and at the same time exhibiting to him the original.

JAMES MCKAY,  
*U. S. Marshal.*

March 18, 1896.

United States Circuit Court, Fifth Circuit, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant,  
*vs.*  
 T. B. MERRILL, as Receiver of the First National Bank of Palatka, Defendant. }

41 I, Eugene O. Locke, clerk of the United States circuit court, fifth judicial circuit, southern district of Florida, do hereby certify that the foregoing pages, numbered from one to thirty

five, both inclusive, is a true and correct transcript of the record, assignment of errors, and all proceedings in the above-entitled cause, from the files and records of my office.

[SEAL.] Witness my hand and seal of said court, at the city of Jacksonville, in the district and circuit aforesaid, this 24th day of March, A. D. 1896, and of our Independence the 120th.

EUGENE O. LOCKE, Clerk.

(Endorsed:) Filed April 9, 1896. J. M. McKee, clerk.

42 *Proceedings in United States Circuit Court of Appeals, Fifth Circuit.*

November Term, 1895, Monday, June 1st, 1896.

(Extract from Minutes.)

T. B. MERRILL, Receiver,  
vs.  
THE NATIONAL BANK OF JACKSONVILLE. }

This cause was regularly called this day and submitted to the court upon briefs of counsel heretofore filed.

November Term, 1895, Monday, June 15th, 1896.

(Extract from Minutes.)

T. B. MERRILL, Receiver of the First National Bank of Palatka, Florida, vs. {

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Florida, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed, and this cause remanded to said circuit court with instructions to enter a decree in accordance with the views expressed in the opinion rendered by this court in this cause, the costs of appeal to be paid by the First National Bank of Jacksonville and the costs of the circuit court to be paid by the receiver as part of the expenses of his administration.

JUNE 15, 1896.

43 And afterwards, to wit, on the 16th day of January, 1897, a petition and order allowing appeal was filed in said cause, and is in the words and figures following, to wit:

In the Circuit Court of Appeals for the Fifth Circuit.

THE NATIONAL BANK OF JACKSONVILLE, Appellee, }  
 against }  
 T. B. MERRILL, as Receiver, etc., Appellant. }

The above-named respondent and appellant, T. B. Merrill, feeling himself aggrieved by the decree of this court of 15th of June, 1896, does hereby appeal to the Supreme Court of the United States from the said decree, and prays that his appeal may be allowed and a citation granted, directed to the appellee, commanding it to appear before the Supreme Court of the United States on the thirtieth day after the allowance of this appeal, and do and receive what may appertain of justice to be done in the premises, and that a transcript of the papers used upon the said appeal to the circuit court of appeals, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated twenty-fourth December, 1896.

DUNCAN U. FLETCHER,  
*Solicitor for said Def't, App'l.*

The foregoing appeal is hereby allowed.

Dated eleventh day of January, 1897.

E. D. WHITE,  
*Associate Justice.*

(Endorsed :) Filed January 16, 1897. J. M. McKEE, clerk.

44

*Opinion.*

Filed June 15th, 1896.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1895.

T. B. MERRILL, as Receiver of the First National Bank of Palatka, }  
 Appellant, }  
 vs. }

THE FIRST NATIONAL BANK OF JACKSONVILLE, Appellee. }

Appeal from the United States circuit court, southern district of Florida.

Before Pardee and McCormick, circuit judges, and Speer, district judge.

This was a bill filed by the National Bank of Jacksonville against T. B. Merrill, as receiver of the First National Bank of Palatka, and shows, among other things, that the appellee was a creditor of the First National bank for one class of indebtedness, consisting of sundry drafts, amounting to \$6,010.47, and for another class of indebtedness, consisting of certificates of deposit, loans, and interest, amounting to \$10,093.34, making a total of \$16,103.81 due the appellee from the First National Bank of Palatka on the 17th day of July, 1891; that

the appellee held certain collateral to secure the last-mentioned indebtedness, amounting to \$10,896.22 according to the face thereof; that the appellee collected a portion of the collateral after insolvency of the bank, leaving a balance due on its said indebtedness so secured by collateral of \$4,496.44; that the receiver and comptroller allowed the appellee dividends on this balance and dividends on the unsecured indebtedness, but refused to allow dividends on the total indebtedness from the date of insolvency; that there has been great delay by said receiver in winding up the matters of said First National Bank of Palatka, and that the receiver has made no distribution of assets of said bank since the 17th day of May, 1893. The prayer of the bill is "that the defendant may discover the amount of assets of said First National Bank of Palatka that came into his hands and account for the same, and that the defendant may be decreed to pay to your orator (and to all other creditors of said First National Bank of Palatka in like situation who may come in and make themselves parties to this suit and contribute to the expenses thereof) a *pro rata* distribution upon the entire amount of indebtedness due to your orator from the said First National Bank of Palatka, to wit, upon the sum of sixteen thousand one hundred and three and  $\frac{8}{10}$  dollars, together with interest thereon from the 17 day of July, A. D. 1891, without deducting therefrom the amount realized from collateral given to secure a portion of said amount due your orator from said bank, as aforesaid.

That the defendant may wind up the affairs of said bank and of his said receivership thereof without further delay.

And that your orator may have such other and further relief in the premises as to your honor may seem meet and the necessities of this case may require and as shall be agreeable to equity."

The receiver demurred to the bill on the following grounds:

"First. That the said bill does not contain any matter of equity whereon this court can ground any decree or give any relief against this defendant.

Second. Because the complainant seeks to make proof of its claim without deducting amounts collected by it from collateral securities prior to making proof, and, further, seeks to compel the defendant to pay it ratably, in proportion with other creditors, on a basis of the gross amount of indebtedness without crediting the collections from said collateral securities.

Third. Because the complainant is estopped in equity 46 from making new proof, having made proof according to law and receive dividends upon the basis of said proof.

This demurrer was overruled and the receiver answered as follows:

### I.

"That this defendant has never made or declared any dividend to the creditors of the First National Bank of Palatka. On the contrary thereof, this defendant says that he was made receiver of the said bank by appointment of the United States Comptroller of the Currency under section 5234 of the Revised Statutes, and that since

his said appointment he has paid over to said comptroller all moneys derived by him from the assets of the said bank, in accordance with the terms of the said law, and that the appointment of the complainant and the dividend thereunder set forth in the bill of complaint were made by the said comptroller, and this defendant had nothing whatever to do therewith except to transmit to the complainant the checks of the said comptroller representing the said payments, which said payments were made in pursuance of the provisions of section 5236 of the Revised Statutes, and that this defendant has not and cannot have any authority to make disbursements to any of the creditors of the said bank, nor has he in his hands any funds which are available for that purpose. On the contrary thereof, this defendant is charged under the law of his appointment with the duty of transmitting to the comptrolier all moneys realized from the assets of the said bank."

## II.

"And, further answering the said bill, this defendant denies that the complainant gave due notice that it would demand a *pro rata* dividend upon the whole amount due to it without deducting the amount collected on collateral security. On the contrary thereof, this defendant avers the fact to be that the complainant accepted the said ruling of the said comptroller without demur and accepted from the said comptroller, through this defendant, with 47 out protesting notice of any kind, the checks of the said comptroller in payment of the dividends mentioned in the bill, and that it was not until the 15th of March, 1894, that the complainant gave notice of any kind that it dissented from the said ruling of the comptroller and would demand payment upon a different basis; that since December 1st, 1892, the said comptroller has made disposition of the assets of the said bank in his hands in good faith, believing that the matter of his said ruling was at rest, so that the complainant should now be estopped to demand an apportionment on a different basis."

## III.

"And, further answering the said bill, this defendant says that he has realized in money from the assets of the said bank the sum of \$176,317.91; that under the orders of the said comptroller he has disbursed the sum of \$31,561.33 for the expenses of his receivership, 'in which expenses are included moneys paid on decree in litigated case in this court, and for loans paid, etc., amounting to the sum of \$17,653.55;' that he has transmitted to the said comptroller, as required by law, the sum of \$143,849.03; that there remains in the hands of this defendant the sum of \$907.55, which is subject exclusively to the orders of the said comptroller, and that the remaining assets of the said bank consist of sundry parcels of real property and some securities and choses in action, many of which are absolutely worthless and the value of the rest of which cannot be estimated."

## IV.

"And, further answering the said bill, this defendant denies that there has been great, or any, delay in winding up the matters of the said bank; on the contrary thereof, the assets of the said bank have been realized upon with the utmost expedition consistent with the character of the same and the great business depression which has existed in Florida since this defendant took charge of the affairs of the said bank. Moreover, this defendant, in all matters concerning the management of the assets of the said bank, has acted strictly in accordance with instructions received from the Comptroller of the Currency."

48 The complainant excepted to this answer as insufficient, but the exceptions were overruled; whereupon the complainant, without replying, set the case for hearing on bill and answer. On the hearing the circuit court rendered a decree as follows:

"It is ordered, adjudged, and decreed that the complainant is entitled to receive from the assets of the said First National Bank of Palatka a distributive share and dividend as one of the creditors of said bank, based upon and to be calculated upon the whole amount of the indebtedness due said complainant from said bank, principle and interest, to wit, upon the basis of the sum of sixteen thousand one hundred and three and eighty-one one-hundredths dollars (\$16,103.81) as the amount of the indebtedness due complainant on July 17th, 1891, with interest thereon from July 17th, 1891, and crediting thereon as partial payments the dividends heretofore paid on the dates of their several payments.

It is further ordered, adjudged, and decreed that the said defendant, as receiver, declare the dividend to be due to complainant upon the said basis of its said claim, as above stated, and that said amount of such dividend should be paid out of any assets of the defendant bank which were in the hands of the said defendant, as receiver, on the 15th day of March, 1894, or came into his hands since the said 15th day of March, 1894, after the payment out of such assets of any cost and expenses of such receivership as may have remained unpaid since the 15th day of March, 1894.

It is further ordered, adjudged, and decreed that the said defendant, as such receiver, do declare said dividend as payable to the said complainant and do pay said complainant the amount of such dividend out of any assets that were in the hands of said receiver on the 15th of March, 1894, or may have come into his hands since the 15th day of March, 1894, after deducting from said assets and expenses of said receivership due on that date or accruing since.

49 It is further ordered, adjudged, and decreed that the said defendant, as receiver of said First National Bank of Palatka, do file within thirty days, in this cause, in this court, an account showing the amount of assets in his hands on the 15th day of March, 1894, and received by him out of the assets of said bank since the 15th day of March, 1894, and the expenditures out of the same for the expenses and management of such receivership, as hereinbefore mentioned, and that the amount due to the complainant upon the

dividends to it, as a creditor of said bank, upon the basis hereinbefore decreed, shall be paid to said complainant out of such balance of such assets as were in the hands of such receiver on the 15th day of March, 1894, aforesaid, and have been received by him since the 15th of March, 1894."

The receiver, under order from the Comptroller of the Currency, sued out and prosecuted this appeal, assigning as errors:

"First. Because the court erred in rendering the decree overruling the defendant's demurrer to the bill of complaint herein.

Second. Because the court erred in rendering the final decree herein: (a) because the said decree herein requires the defendant to declare and pay dividends, whereas the law does not vest receivers of national banks with authority to either declare or pay dividends; (b) because said final decree requires the defendant to file an account showing the assets in his hands and his expenditures; which order is beyond the power of said court to enforce."

PARDEE, circuit judge, delivered the opinion of the court:

As this case was heard upon the bill and answer, it follows that all matters well pleaded in the bill and not denied or avoided in the answer, and all matters properly pleaded in the answer, responsive to the bill or in avoidance of the same, are to be taken as true.

Thus considering the bill and answer, the following material facts appear: On the 17th of July, 1891, the First National Bank of Palatka failed, and thereafter the appellant was duly appointed by the Comptroller of the Currency as receiver of said bank and entered upon his duties, taking charge of all the books, notes, accounts, property, and effects of the same. At this — the National Bank of Jacksonville, appellee herein, had two demands against the First National Bank of Palatka; one of these was for sundry drafts, unsecured, for the sum of \$6,010.47, and the other was for certificates of deposit, loan and interest, amounting to \$10,093.34, and secured by collateral of the face value of \$10,896.22. The said bank having tendered proper proof of its said claims, the comptroller allowed the unsecured demand of \$6,010.47, but rejected the secured claim, directing the National Bank of Jacksonville to exhaust its collateral given to secure said demand, and then to prove the claim for the difference between the amount of the loan and interest and the amount realized from said collateral.

Upon this ruling by the comptroller the National Bank of Jacksonville proceeded to collect all the productive collateral and credited the same upon the demand, and thereafter presented a claim for allowance in the sum of \$4,496.44, balance due on the \$10,000 demand after applying the proceeds of collateral as collected. This claim was allowed by the comptroller. The National Bank of Jacksonville received dividends from time to time as the same were declared, based upon the unsecured demand and upon the balance of the secured demand as proved. This condition remained until September 11, 1894, when this suit was instituted for the purpose of establishing the claim against the assets of the First

National Bank of Palatka in favor of the National Bank of Jacksonville for the full amount of the secured debt as it existed at the time the receiver was appointed, without regard to the collateral, which was subsequently collected.

On this state of facts the unsecured claim for \$6,010.47, which was allowed upon presentation and upon which dividends have since been paid and accepted, may be left out of consideration, and

the main question in this case is, Had the National Bank of 51 Jacksonville the right to prove up the full amount of its \$10,000 claim, although secured by collateral, and receive dividends on the full amount thereof without reference to the amounts that might be subsequently collected on such collateral and applied on the same claim?

The precise question was adjudicated in the case of *Armstrong v. Chemical National Bank*, 16 U. S. App., 465, where nearly all the adjudged cases are reviewed and the question is discussed on principle. In that case it was held that "the creditors of an insolvent national bank in proving their claims cannot be required to allow any credit for collection from collateral made subsequent to the declared insolvency of the bank and before the filing of the proof of claim."

From an examination of many of the cases cited and reviewed in *Armstrong vs. Chemical National Bank, supra*, as well as a consideration of the reasoning therein, we are compelled to concur with the rule as declared in that case, and therefore we hold in the instant case that when the National Bank of Jacksonville presented to the receiver the proof of its secured debt as it was on the day the First National Bank of Palatka failed, said proof should have been received and the claim allowed without reference to the collateral held to secure the said claim, and that the said National Bank of Jacksonville is now entitled to have the claim adjudicated by proper decree in this case, and to be decreed to have such relief as the circumstances of the case and jurisdiction of the court will permit.

The appellant complains of the form of the decree appealed from and strongly objects that certain relief therein granted was beyond the power of the court and not warranted by the facts in the case. It is objected that the appellant, as receiver, has no authority to declare any dividend payable to complainant or to pay the complainant any dividends out of any assets that were in the hands of the receiver on March 15, 1894, or may hereafter come into his hands

since the 15th day of March, 1894, because, he says, under the 52 laws of the United States he is compelled to pay all moneys collected by him as receiver into the Treasury of the United States, subject to the order of the Comptroller of the Currency, and that by the same laws the Comptroller of the Currency is alone authorized to declare and pay dividends. Section 5234 of the Revised Statutes of the United States provides for the appointment and duties of receivers of national banks, and thereunder receivers are appointed by the Comptroller of the Currency, and they are under the direction of the the Comptroller and are required to pay over all money made out of the assets of the insolvent bank to the Treasury

of the United States, subject to the order of the comptroller, and also make report to the comptroller of all other acts and proceedings.

Section 5236 of the Revised Statutes of the United States provides as follows :

"From time to time, after full *full* provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."

Under these statutes it seems clear that the assets of an insolvent national bank, when collected by the receiver, are entirely within the control and disposition of the Comptroller of the Currency, and that the receiver is without power in respects to the payment of dividends.

Numerous authorities have been cited by the counsel for appellee to the effect that the title to the assets of an insolvent national bank is transferred to the receiver. *Richmond v. Irons*, 121 U. S., 27; *National Bank vs. Colby*, 21 Wall., 609; *Pacific National Bank vs.*

*Mixter*, 124 U. S., 724; *Scott — Armstrong*, 146 U. S., 499; *53 Armstrong vs. American Exchange National Bank*, 133 U. S.,

433. In this last-mentioned case it appears that a decree directing the receiver to allow the claim for the full amount against the assets in his hands as receiver, and to satisfy it by paying such dividends as he had made theretofore and as should be made thereafter from the assets of the Fidelity bank in the due course of administration, and to pay the defendant twenty-five per cent. already declared, with interest, etc., was confirmed by the Supreme Court.

In none of the cases cited does it appear that the precise question was considered. In general the receiver of a national bank has been held to be a mere instrument of the comptroller and subject in all respects to his instruction. *Kennedy vs. Gibson et al.*, 8 Wall., 498; *Bank — Kennedy*, 17 Wall., 21.

In *Eastern Townships Bank vs. Vermont National Bank*, 22 Fed. Rep., 186, the proper form of a decree in a case similar to the one in hand was considered in reference to section 5236, Revised Statutes, and *Case vs. Bank*, 100 U. S., 446. It was held that judgments in such cases should be certified by the receiver through the comptroller and be paid in due course of administration. In *Case vs. Bank*, *supra*, the judgment was, after reciting the amount of the demand, etc., as follows: "That Frank F. Case, receiver, do recognize the said Citizens' Bank of Louisiana as creditor, \* \* \* and that he do pay the same or certify the same to the comptroller, to be paid in due course of administration, \* \* \* and that the Citizens' Bank of Louisiana do receive, before further payment to creditors,

its due proportion of dividends *pro rata* with those already paid to the creditors of the Crescent City National bank." In this case it does not appear that the form of the judgment was contested, but in affirming the judgment the court did say: "Beyond all doubt, the validity of their debt is established by the verdict and judgment, and if so it requires neither argument nor authorities to show that the order given by the circuit court to provide for the payment of the amount recovered was proper and correct." *Ib.*, 456.

In the absence to the contrary by the Supreme Court of 54 the United States, the law as declared in the statute above quoted should prevail.

Appellant further objects that the court was without authority on the pleadings and facts to decree that the receiver should account to the court in the instant case as to the assets of the First National Bank of Palatka received and collected by him and his expenditures out of the same for the expenses and management of the receiver-ship.

The appellant contends that the case made does not warrant any such accounting as is decreed; that the case was heard on bill and answer, and that the answer, which is admitted to be true, shows the amounts that the receiver had received and disbursed.

The appellee had a right to resort to the court to have his claim adjudicated when it was refused by the comptroller, but it is very doubtful whether, on the case made by the bill and answer, if in any case the receiver in a suit in which the comptroller is not a party can be made to account for an administration of which the comptroller is solely responsible.

As we view the equities involved, a decree to the effect that on the 1st day of July, 1891, the First National Bank of Palatka was indebted to the National Bank of Jacksonville on a certificate of deposit secured by collateral in the sum of \$10,093.34; which indebtedness was duly proved and should have been allowed and dividends paid thereon; that said indebtedness is now allowed as of the date of July 1st, 1891, and that the National Bank of Jacksonville be paid dividends on such indebtedness as have been allowed and paid on other indebtedness of said First National Bank of Palatka, with eight per cent interest on such dividends from the date of declaration thereof, less a credit of the sums heretofore paid as dividends on that part of said claim heretofore allowed: Provided, however, that the dividends heretofore paid and hereafter to be paid on said sum of \$10,093.34, together with the amounts heretofore and hereafter received on the collaterals securing said indebtedness, shall not exceed one hundred cents on the dollar on

55 the principle and interest on said debt; that T. B. Merrill, receiver, do recognize the said National Bank of Jacksonville as a creditor of the First National Bank of Palatka in the said sum of \$10,093.34, as of date July 17th, 1891; that he do pay the same or certify the same to the Comptroller of the Currency to be paid in due course of administration, and that the said National Bank of Jacksonville do receive, before further payment to creditors, its due proportion of dividends, as hereinbefore declared, with interest

thereon, with those already paid to the other creditors of the First National Bank of Palatka; will protect the rights of the National Bank of Jacksonville as fully as the nature of the case and the jurisdiction of the court will permit, particularly in view of the conduct of the said bank in proving up part of its said claim, in accepting dividends on such part, and in delaying to bring this suit until after large dividends had been declared and paid to the other creditors.

The decree of the circuit court is reversed and the cause is remanded, with instructions to enter a decree in accordance with the views herein expressed; the cost of appeal to be paid by the National Bank of Jacksonville and the costs of the circuit court by the receiver as a part of the expenses of his administration.

June 15, 1896.

56 United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing fifty-six pages, numbered from a to 55, inclusive, contain a true copy of the record, pleas, process, and proceedings in the case of T. B. Merrill, receiver, appellant, *v.* The National Bank of Jacksonville, appellee, No. 486, as the same remains on the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals,  
Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 28 day of January, A. D. 1897.

J. M. MCKEE,  
*Clerk of the United States Circuit Court of Appeals  
for the Fifth Circuit.*

57 UNITED STATES OF AMERICA, *ss.*

To the National Bank of Jacksonville, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the United States circuit court of appeals for the fifth circuit, wherein T. B. Merrill is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this eleventh day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

E. D. WHITE,  
*Associate Justice of the Supreme Court of the United States.*

58 On this 14th day of January, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared Frank Drew before me, the subscriber, a notary public in and for the State of Florida at large, duly commissioned and authorized, and makes oath that he delivered a true copy of the within citation to William B. Barnett, as and who is the president of the said National Bank of Jacksonville, at Jacksonville, in the county of Duval and State of Florida.

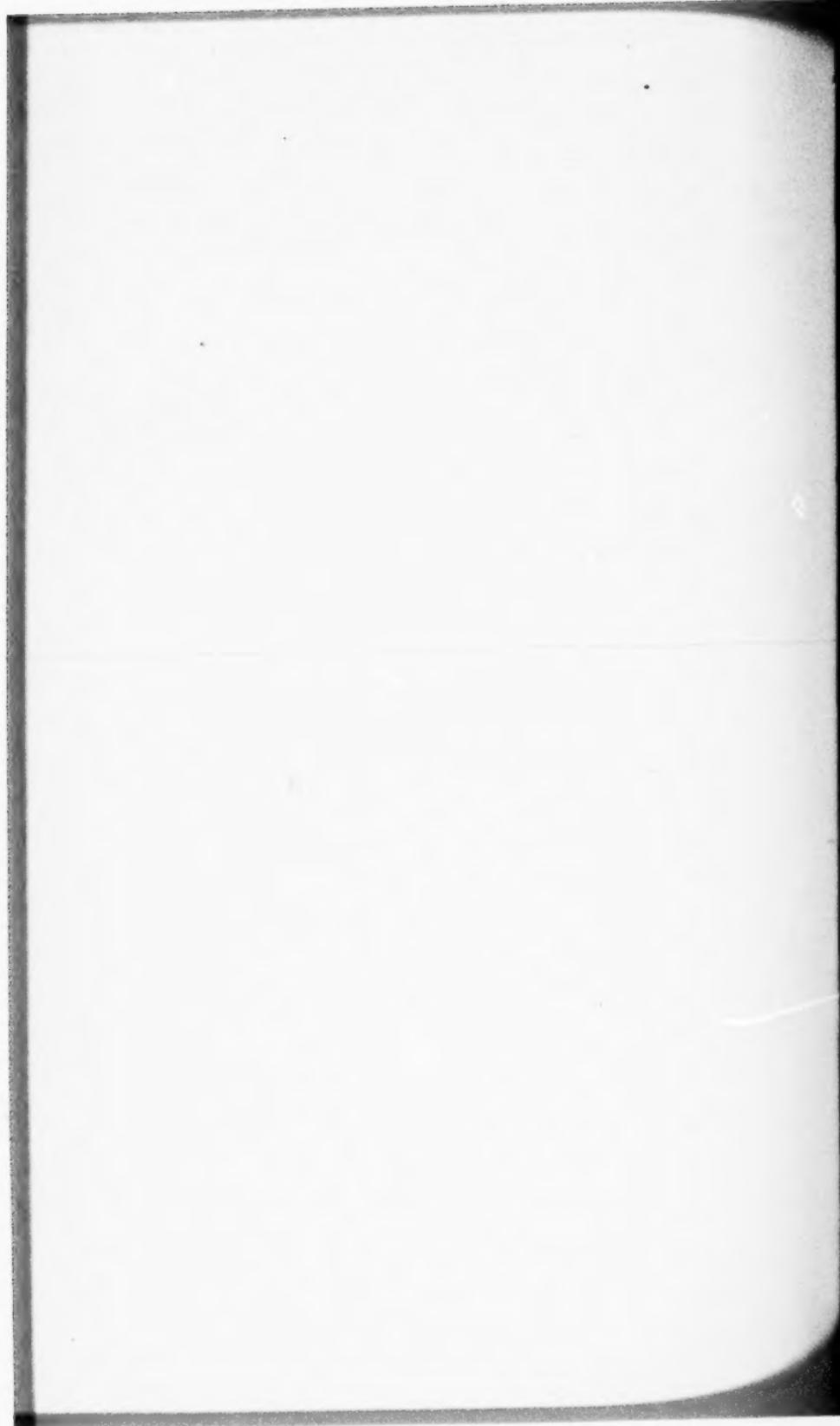
FRANK DREW.

Sworn to and subscribed the 14th day of January, A. D. 1897.

[Seal of John W. Dodge, Notary Public, State of Florida.]

JNO. W. DODGE,  
*Notary Public, State of Florida at Large.*

Endorsed on cover: Case No. 16,486. U. S. C. C. of appeals, 5th circuit. Term No., 300. T. B. Merrill, as receiver of the First National Bank of Palatka, appellant, vs. The National Bank of Jacksonville. Filed February 6, 1897.



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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 304. 55.

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T. B. MERRILL, AS RECEIVER OF THE FIRST NATIONAL  
BANK OF PALATKA, APPELLANT.

vs.

THE NATIONAL BANK OF JACKSONVILLE.

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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FILED FEBRUARY 8, 1897.

(16,487.)

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(16,487.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 301.

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T. B. MERRILL, AS RECEIVER OF THE FIRST NATIONAL  
BANK OF PALATKA, APPELLANT,

vs.

THE NATIONAL BANK OF JACKSONVILLE.

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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INDEX.

	Original.	Print.
Caption .....	a	1
Transcript from United States circuit court, southern district of Florida.....	1	1
Bill of complaint.....	1	1
Subpoena and marshal's return.....	8	5
Order taking bill <i>pro confesso</i> and praecipe for entry of same.....	11	6
Demurrer.....	12	7
Setting down demurrer.....	15	8
Order overruling demurrer.....	15	8
Answer.....	17	9
Exceptions to answer.....	21	11
Setting down exceptions for argument.....	30	15
Notice to hear exceptions.....	31	16
Order overruling exceptions to answer.....	32	16
Notice setting down case on bill and answer.....	32	17

	Original.	Print.
Decree .....	33	17
Assignment of error.....	36	18
Claim of appeal and order.....	37	19
Citation and marshal's return .....	39	20
Clerk's certificate.....	40	20
Mandate.....	42	21
Decree.....	46	22
Assignment of errors.....	49	24
Prayer and allowance of appeal .....	51	26
Citation .....	53	26
Clerk's certificate .....	54	27
Motion of appellee to dismiss .....	55	27
Motion of appellant to advance cause.....	56	28
Agreement as to hearing of motion.....	57	29
Submission of motions.....	58	29
Decree dismissing appeal .....	58	30
Petition and order granting appeal .....	59	30
Opinion of court .....	60	31
Certificate .....	62	32
Citation .....	63	32
Proof of service of citation .....	64	32

a United States Circuit Court of Appeals, Fifth Circuit, November Term, 1896.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun, pursuant to law, on the third Monday of November, 1896, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, and the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable T. S. Maxey, United States district judge for the western district of Texas.

T. B. MERRILL, Receiver, Appellant,  
vs.  
THE NATIONAL BANK OF JACKSONVILLE, Appellee. } No. 542.

Be it remembered that heretofore, to wit, on the 23rd day of October, 1896, a transcript of the record of the above-styled cause from the circuit court of the United States for the southern district of Florida was filed in the office of the clerk of the United States circuit court of appeals for the fifth circuit in the words and figures following, to wit:

1 In United States Circuit Court, Fifth Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complain- }  
ant,  
vs.  
T. B. MERRILL, as Receiver of the First National } In Chancery.  
Bank of Palatka, Defendant.

*Bill.*

The National Bank of Jacksonville, a corporation under the laws of the United States of America, and having its place of business at Jacksonville, Florida, brings this its bill of complaint, for itself and all other persons in like situation, who shall come in and make themselves parties to this suit, and contribute to the expenses thereof, against T. B. Merrill, as receiver of the First National Bank of Palatka, a corporation under the laws of the United States of America, and heretofore doing business at Palatka, in the State of Florida.

And thereupon, your orator complains and says as follows: That your orator is a corporation under the laws of the United States of America, and having its place of business at Jacksonville, in the State of Florida, where it was at the times hereinafter mentioned, and is now engaged in conducting the business of a national bank.

2 That the First National Bank of Palatka is a corporation under the laws of the United States of America, having its

place of business at Palatka, Florida, where, prior to the 17th day of July, A. D. 1891, it was engaged in conducting the business of a national bank.

That on the 17th day of July, A. D. 1891, the said First National Bank of Palatka failed, and closed its doors, and the Hon. E. S. Lacy, as comptroller of the United States of America, subsequent to said last-mentioned date, appointed this defendant, to wit: the said T. B. Merrill, as receiver of the First National Bank of Palatka, and the said receiver took charge of the said banking business, theretofore conducted by said First National Bank of Palatka, and all of the books, notes, accounts, property and effects of said First National Bank of Palatka.

That this court has jurisdiction of the parties to and their subject-matter to this suit; that this is a suit of a civil nature in equity; that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arises under the laws of the United States of America.

That at the time of the failure of the First National Bank of Palatka it was indebted to your orator for sundry drafts of said bank to the order of your orator on the Hanover National Bank of New York, amounting, with fees, to \$6,010.47 (six thousand and  $\frac{47}{100}$  dollars), which said indebtedness was unsecured by collateral.

And said First National Bank of Palatka was further indebted to your orator at the time of its failure in the sum of ten thousand dollars (\$10,000.00), and interest, for a loan made said bank by your orator on June 5th, A. D. 1891; that at the time said loan was made the said First National Bank of Palatka delivered to your orator their time certificate of deposit, No. 6120, due in sixty days from date, bearing interest at eight per cent., to which said bank attached, as collateral security, sundry notes belonging to said First National Bank of Palatka, to wit:

St. James on Gulf.....	\$1,000 00
R. H. Mason.....	250 00
T. V. Hinks.....	300 00
G. U. Beach.....	300 00
G. U. Beach.....	2,000 00
The Florida Commercial Co.....	396 90
A. B. Mason.....	1,300 00
A. L. Hart.....	5,350 22
 Total.....	 \$10,896 22

The total indebtedness due to your orator from the First National Bank of Palatka on the day of its failure was:

For sundry drafts.....	\$6,010 47
For certificate of deposit, loan and interest.....	10,093 34

Total amount due.....	\$16,103 81
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Making a total of sixteen thousand, one hundred and three and  $\frac{81}{100}$  dollars (\$16,103.81) due to your orator from the First National Bank of Palatka on the 17th day of July, A. D. 1891.

4 That your orator proved its claim, in due form of law, before said receiver aforesaid, for six thousand and ten and  $\frac{47}{100}$  dollars, being amount of drafts due to your orator from said First National Bank of Palatka, and upon which said amount so proven your orator has received distributions as follows:

December 10th, 1892, 35 % .....	\$2,103 67
May 17th, 1893, 10 % .....	601 05
<hr/>	
Total.....	\$2,704 72

That in addition to proving the amount of \$6,010.47 due on sundry drafts aforesaid, your orator offered to prove up its claim for \$10,000.00, being amount of certificate of deposit secured by collateral, as aforesaid, but the said defendant receiver would not permit your orator to prove the total amount of \$10,000.00 and interest due thereon for said loan as aforesaid, but under the ruling of the comptroller of the United States of America, your orator was not allowed to prove its claim in full before the defendant receiver, but was ordered to first exhaust the collateral given to secure said loan for \$10,000.00, as aforesaid, and then to prove the claim for the difference between the amount of the loan and interest, and the amount realized from said collateral.

Under the ruling of the comptroller your orator collected all of the notes given as collateral to secure said loan of \$10,000.00, except the note of H. L. Hart, for five thousand three hundred and fifty and  $\frac{2}{100}$  dollars; which last-mentioned note was placed in judgment, and which judgment was non-productive, and which 5 said judgment has been assigned and transferred by your orator to the defendant herein as receiver, as aforesaid.

That after exhausting the collateral your orator proved its claim for the balance due on said certificate of deposit for \$10,000.00, so secured by said collateral, as aforesaid, to wit: for the sum of four thousand four hundred and ninety-six and  $\frac{44}{100}$  dollars, upon which said balance of \$4,496.44 your orator has received the following dividends from the defendant receiver, to wit:

December 1st, 1892.....	\$1,573 75
May 17th, 1893.....	449 64
<hr/>	
Total.....	\$2,033 39

That the defendant should have allowed your orator to have proven its entire claim of \$16,103.81, and to have received *pro rata* dividends upon the entire amount thereof.

That your orator is informed and believes, and upon such information and belief so charges the truth to be, that the same rule was applied as to other creditors of the said First National Bank of Palatka, and that it was an erroneous and illegal manner of de-

claring a dividend. That your orator gave due notice that it would demand a *pro rata* dividend upon the whole amount due your orator, without deducting the amount collected on collateral security, to wit: that it would demand a *pro rata* dividend upon \$16,103.81, and interest thereon from the 17th day of July, A. D. 1891.

That your orator does not know, without a discovery, what amount of assets the defendant, as such receiver, did receive, and what disposition he made of them, or what amount your  
6 orator is justly entitled to receive under the distribution by the receiver herein, and that an accounting is necessary to ascertain the same.

That there has been great delay in winding up the matters of said First National Bank of Palatka by said receiver.

That the defendant has made no distribution of the assets of said bank since the 17th day of May, A. D. 1893.

All of which actings and doing are contrary to equity. To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby and herein prayed; and may, upon his corporal oath, and according to the utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters herein set forth, as if particularly interrogated thereunto.

And your orator prays as follows:

That the defendant may discover the amount of assets of said First National Bank of Palatka that came into his hands, and account for the same, and that the defendant may be decreed to pay to your orator (and to all other creditors of said First National Bank of Palatka in like situation, who may come in and make themselves parties to this suit, and contribute to the expenses thereof) a *pro rata* distribution upon the entire amount of indebtedness due to your orator from the said First National Bank of Palatka, to wit: upon the sum of sixteen thousand one hundred and three and  $\frac{81}{100}$  dollars, together with interest thereon from the 17th day  
7 of July, A. D. 1891, without deducting therefrom the amount realized from collateral given to secure a portion of said amount due your orator from said bank as aforesaid.

That the defendant may wind up the affairs of said bank and of his said receivership thereof, without further delay.

And that your orator may have such other and further relief in the premises as to your honor may seem meet, and the necessities of this case may require, and as shall be agreeable to equity.

May it please your honor to grant unto your orator the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, to be directed to the defendant, T. B. Merrill, as receiver of the First National Bank of Palatka, a corporation incorporated under the laws of the United States of America, commanding him, at a certain time, and under a certain penalty, to be therein limited, personally to be and appear before this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to

stand to, perform and abide such further order, direction and decree herein as to this honorable court may seem meet.

**COOPER & COOPER,**  
*Solicitors for Complainant.*

(Endorsed:) In United States circuit court, fifth circuit, in and for southern district of Florida. In chancery. National Bank of Jacksonville vs. T. B. Merrill, receiver. Filed Sept. 11, 1894. E. O. Locke, clerk. Bill. Cooper & Cooper, solicitors for complainant.

8 UNITED STATES OF AMERICA, {  
*Southern District of Florida.* }

The President of the United States of America to T. B. Merrill, as receiver of the First National Bank of Palatka, a corporation incorporated under the laws of the United States of America:

We command you, and every one of you, that you appear before the judges of the circuit court of the United States of America, for the fifth circuit and southern district of Florida, at Jacksonville, in said district, on the first Monday, being the fifth day of November next, to answer to a bill of complaint exhibited against you by the National Bank of Jacksonville, a corporation under the laws of the United States of America, and having its place of business at Jacksonville, Florida, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

9                   Witness the Honorable Melville W. Fuller, Chief Justice  
[SEAL.] of the Supreme Court of the United States, and the seal of  
this court, at the city of Jacksonville in said district, this  
eleventh day of September, A. D. 1894.

E. O. LOCKE, Clerk,  
By N. A. GREENING, D. C.

COOPER & COOPER,  
*Solicitors for Complainant.*

*Memorandum.*

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

E. O. LOCKE, Clerk,  
By N. A. GREENING, D. C.

Received the within writ on the 11th day of September, A. D. 1894, at Jacksonville, Florida, and executed the same by delivering a true copy hereof to T. B. Merrill, as receiver of the First National

Bank of Palatka, at the same time exhibiting to him this original, at Palatka, Florida, on September 14th, A. D. 1894.

JAMES MCKAY,  
U. S. Marshal.

10      No. 112. Circuit court United States, southern district of Florida. The National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Chancery subpoena. Returnable to rule day, first Monday in November, A. D. 1894. E. O. Locke, clerk, by N. A. Greening, D. C. Filed September 14, A. D. 1894. E. O. Locke, clerk. Cooper & Cooper, complainant's solicitors.

11      In the United States Circuit Court, Fifth Judicial Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, a Corporation under the Laws of the United States of America, Complainant,      *vs.*      T. B. MERRILL, as Receiver of the First National Bank of Palatka, a Corporation under the Laws of the United States of America, Defendant.      } In Chancery.

Now comes the complainant in the above-stated cause, by Cooper & Cooper, its solicitors, on this the rule day in November, 1894, being the rule day next succeeding the appearance day in said cause, and the said defendant above named in above-entitled cause having failed to file plea, demurrer or answer to complainant's said bill of complaint, on the said rule day, and the said defendant aforesaid being in default thereof, the said complainant now elects to enter its order (as of course) in the order book that its bill be taken *pro confesso*, and the said complainant does now enter said order that its said bill and all its allegations be taken as confessed by the said defendant above named in above-stated cause.

Let the defendant aforesaid take notice that as of its right the complainant will proceed *ex parte* in said cause.

COOPER & COOPER,  
*Solicitors for Complainant.*

12      The clerk of said above-named court will please enter the above order in the order book.

COOPER & COOPER,  
*Solicitors for Complainant.*

(Endorsed:) In the United States circuit court, fifth judicial circuit, in and for the southern district of Florida. In chancery. National Bank of Jacksonville, complainant, *vs.* T. B. Merrill, receiver, defendant. Order taking bill *pro confesso* and praecipe for entry of same. Filed Nov. 5, 1894. E. O. Locke, clerk. Cooper & Cooper, solicitors for complainant.

In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE  
 v/s.  
 T. B. MERRILL, as Receiver of the First National  
 Bank of Palatka. } In Chancery.

The demurrer of T. B. Merrill, as receiver of the First National Bank of Palatka, to the bill of complaint of The National Bank of Jacksonville, the above-named plaintiff.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is herein set forth and alleged, doth demur to said bill, and for cause of demurrer sheweth—

13 First. That the said bill does not contain any matter of equity whereon this court can ground any decree or give any relief against this defendant.

Second. Because the complainant seeks to make proof of its claim without deducting amounts collected by it from collateral securities prior to making proof, and further seeks to compel the defendant to pay it ratably in proportion with other creditors on a basis of the gross amount of indebtedness without crediting the collections from said collateral securities.

Third. Because the complainant is estopped in equity from making new proof, having made proof according to law and received dividends upon the basis of the said proof.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JOHN WURTS AND  
 E. E. HASSELL,  
*Counsel for Defendant.*

14 STATE OF FLORIDA, }  
 County of Putnam. }

Personally appeared before me this day T. B. Merrill, who being first duly sworn, says that he is the defendant who files the foregoing demurrer and that the same is not interposed for delay.

T. B. MERRILL.

Sworn to and subscribed before me this 22d day of November, 1894.

COOK CARLETON,  
*Notary Public, State of Florida at Large.*

[SEAL.]

In my opinion the foregoing demurrer is well founded in point of law.

JOHN WURTS,  
E. E. HASKELL,  
*Of Counsel for the Defendant.*

(Endorsed:) In circuit court of U. S., sou. dist. of Florida. In chancery. Nat. Bank of Jac. *vs.* T. B. Merrill. Demurrer. Filed Nov. 26, 1894. E. O. Locke, clerk. Overruled June 26, 1895. E. O. Locke, clerk.

15 In United States Circuit Court, Fifth Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant,  
*vs.*  
T. B. MERRILL, as Receiver of the First National Bank of Palatka, Defendant. } In Chancery.

Now on this day comes the complainant in the above-stated cause and sets down for argument on the 7th day of January, A. D. 1895, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the demurrer of the defendant to the bill of complaint in the said above-entitled cause.

COOPER & COOPER,  
*Solicitors and of Counsel for Complainant.*

(Endorsed:) In United States circuit court, fifth circuit, in and for southern district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill, as receiver. Filed January 7, 1895. E. O. Locke, clerk. Setting down of demurrer. Cooper & Cooper, solicitors for complainants.

16 In U. S. Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE }  
*vs.*  
T. B. MERRILL, as Receiver, &c. }

This cause coming on to be heard on the demurrer of defendant to the bill and having been argued by counsel, it is ordered and adjudged that said demurrer be and same is hereby overruled, and defendant given until rule day in August, 1895.

June 25, 1895.

JAMES W. LOCKE, Judge.

(Endorsed:) National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Decree overruling demurrer. Filed June 26, 1895. E. O. Locke, clerk.

17 In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE }  
 vs. } In Chancery.  
 T. B. MERRILL, as Receiver, etc. }

The answer of T. B. Merrill, as receiver of the First National Bank of Palatka, the defendant, to the bill of complaint of The National Bank of Jacksonville, the complainant.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

### I.

That this defendant has never made or declared any dividend to the creditors of the First National Bank of Palatka; on the contrary thereof, this defendant says that he was made receiver of the said bank by appointment of the United States Comptroller of the Currency under section 5234 of the Revised Statutes, and that since his said appointment he has paid over to the said comptroller all moneys derived by him from the assets of the said bank in accordance with

the terms of the said law, and that the *appointment* to the  
 18 complainant and the dividend thereunder set forth in the

bill of complaint were made by the said comptroller, and this defendant had nothing whatever to do therewith, except to transmit to the complainant the checks of the said comptroller representing the said payments, which said payments were made in pursuance of the provisions of section 5236 of the Revised Statutes, and that this defendant has not, and cannot have any authority to make disbursements to any of the creditors of the said bank, nor has he in his hands any funds which are available for that purpose; on the contrary thereof this defendant is charged under the law of his appointment with the duty of transmitting to the comptroller all moneys realized from the assets of the said bank.

### II.

And further answering the said bill this defendant denies that the complainant gave due notice that it would demand a *pro rata* dividend upon the whole amount due to it without deducting the amount collected on collateral security; on the contrary thereof this defendant avers the fact to be that the complainant accepted the said ruling of the said comptroller without demur and accepted from the said comptroller, through this defendant, without protesting notice of any kind, the checks of the said comptroller in payment of the dividends mentioned in the bill, and that it was not until the 15th of March, 1894, that the complainant gave notice of any kind that it dissented from the said ruling of the comptroller

and would demand payment upon a different basis; that since December 1st, 1892, the said comptroller has made disposition of the assets of the said bank in his hands in good faith, believing  
19 that the matter of his said ruling was at rest; so that the complainant should now be estopped to demand an apportionment on a different basis.

### III.

And further answering the said bill this defendant says that he has realized in money from the assets of the said bank the sum of \$176,317.91; that under the orders of the said comptroller he has disbursed the sum of \$31,561.33 for the expenses of his receivership, "in which expenses are included moneys paid on decree in litigated case in this court, and for loans paid, etc., amounting to the sum of \$17,653.55;" that he has transmitted to the said comptroller, as required by law, the sum of \$143,849.03; that there remains in the hands of this defendant the sum of \$907.55, which is subject exclusively to the orders of the said comptroller, and that the remaining assets of the said bank consist of sundry parcels of real property and some securities and choses in action, many of which are absolutely worthless, and the value of the rest of which cannot be estimated.

### IV.

And further answering the said bill this defendant denies that there has been great, or any, delay in winding up the matters of the said bank; on the contrary thereof, the assets of the said bank have been realized upon with the utmost expedition consistent with the character of the same, and the great business depression which has existed in Florida since this defendant took charge of the affairs of the said bank. Moreover, this defendant, in all matters concerning the management of the assets of the said bank, has acted  
20 strictly in accordance with instructions received from the Comptroller of the Currency.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of this defendant; all of which matters and things this defendant is willing and ready to aver and prove as this honorable court shall direct; and humbly prays to be hence discharged with his reasonable costs and charges, in this behalf most wrongfully sustained.

T. B. MERRILL,  
*Receiver of the First National Bank of Palatka.*

FLETCHER & WURTS AND  
E. E. HASKELL,  
*Defendant's Counsel.*

STATE OF FLORIDA, }  
 County of Putnam. }

Personally appeared before me this day T. B. Merrill, who, being first duly sworn, says that he is the defendant who files the foregoing answer; that he has read the said answer, and knows the statements therein made, and that the same are true in so far as they are alleged as true; and in so far as they are alleged on 21 information and belief, he is informed that they are true, and he believes them to be true.

T. B. MERRILL.

Sworn to and subscribed before me this 18th day of July, 1895.

[SEAL.]

D. M. KIRBY,

Notary Public.

(Endorsed:) In circuit court of United States, southern district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Answer. Filed Aug. 5th, 1895. N. A. Greening, D. C. Fletcher & Wurts, attorneys for defendant.

In United States Circuit Court, Fifth Circuit, in and for Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, a Corporation under the Laws of the United States of America, Complainant, *vs.* T. B. MERRILL, as Receiver of the First National Bank of Palatka, Defendant.

In Chancery.

*Exceptions Taken by the Above-named Complainant to the Answer of the Defendant for Insufficiency.*

22 First exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information and belief answered and set forth whether the complainant is a corporation under the laws of the United States of America, and having its place of business at Jacksonville, in the State of Florida, and as to whether or not it was at the times mentioned in the bill of complaint, and is now engaged in conducting the business of a national bank.

Second exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information, and belief, answered and set forth whether the First National Bank of Palatka is a corporation under the laws of the United States of America, having its place of business at Palatka, Florida, where, prior to the 17th day of July, A. D. 1891, it was engaged in conducting the business of a national bank.

Third exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether, on the 17th day of July, A. D. 1891,

the said First National Bank of Palatka, failed, and closed its doors, and whether the Hon. E. S. Lacy, as comptroller of the United States of America, subsequent to said last-mentioned date, appointed this defendant, to wit: the said T. B. Merrill, as receiver of the First National Bank of Palatka, and whether or not the said receiver took charge of the said banking business theretofore conducted by said First National Bank of Palatka, and all of the books, notes, accounts, property and effects of said First National Bank of Palatka.

23     Fourth exception. For that the defendant has not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether this court has jurisdiction of the parties and the subject-matter of this suit, and whether this is a suit of a civil nature in equity, and whether or not the matter in dispute exceeds, exclusive of interest and cost, the sum or value of two thousand dollars, and whether or not the same arises under the laws of the United States of America.

Fifth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, at the time of the failure of the First National Bank of Palatka, it was indebted to your orator, the complainant herein, for sundry drafts of said bank, to the order of your orator, on the Hanover National Bank of New York, amounting, with fees, to \$6,010.47, and whether or not said indebtedness was unsecured by collateral.

Sixth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the First National Bank of Palatka was further indebted to your orator, the complainant herein, at the time of its failure, in the sum of \$10,000.00, and interest, for a loan made said bank by your orator, on June 5th, 1891, and whether, at the time of said loan was made the said First National Bank of Palatka delivered to your orator their time certificate of deposit, No. 6120, due sixty days from date, bearing interest 24     at eight per cent., to which said bank attached, as collateral security, sundry notes belonging to said First National Bank of Palatka, to wit:

St. James on Gulf .....	\$1,000 00
R. H. Mason .....	250 00
T. V. Hinks .....	300 00
G. U. Beach .....	300 00
G. U. Beach .....	2,000 00
The Florida Commercial Co.....	396 90
A. B. Mason .....	1,300 00
A. L. Hart .....	5,350 22
 Total .....	 \$10,896 22

Seventh exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the total indebtedness due to your orator, the complainant in this cause, from the First National Bank of Palatka, on the day of its failure, was:

For sundry drafts . . . . .	\$6,010	47
For certificate of deposit, loan and interest . . . . .	10,093	34
<b>Total amount due . . . . .</b>	<b>\$16,103</b>	<b>81</b>

Making a total of \$16,103.81 due to your orator from the First National Bank of Palatka on the 17th day of July, A. D. 1891.

Eighth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether your orator proved its claim in the due form of law before said receiver aforesaid, for \$6,010.47, being amount of drafts due to your orator from 25 said First National Bank of Palatka, and whether, upon which said amount so proven, your orator has received distribution, as follows:

December 10, 1892, 35% . . . . .	\$2,103	67
May 17th, 1893, 10% . . . . .	601	05
<b>Total . . . . .</b>	<b>\$2,704</b>	<b>72</b>

Ninth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, in addition to proving the amount of \$6,010.47 due on sundry drafts as aforesaid, your orator offered to prove up its claim for \$10,000.00, being amount of certificate of deposit secured by collateral as aforesaid, and whether the said receiver would not permit your orator to prove the total amount of \$10,000.00 and interest due thereon for said loan, as aforesaid, and whether, under the ruling of the comptroller of the United States of America, your orator was not allowed to prove its claim in full before the defendant receiver, and whether it was ordered to first exhaust the collateral given to secure said loan for \$10,000.00, as aforesaid, and then to prove the claim for the difference between the amount of the loan and interest and the amount realized from said collateral.

Tenth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, under the ruling of the comptroller, your orator collected all of the notes given as collateral to secure said loan of \$10,000.00, except the note of H. L. Hart, for \$5,350.22, and whether said last-mentioned note was placed in judgment; and whether said judgment was non-productive, and whether said judgment has been assigned and transferred by your orator to the defendant herein, as receiver, as aforesaid.

26 Eleventh exception. For that the defendant has not, in manner aforesaid, answered and set forth whether, after exhausting the collateral, your orator proved its claim for the balance due on said certificate of deposit for \$10,000.00, so secured by said collateral as aforesaid, to wit: for the sum of \$4,496.44, and whether, upon said balance of \$4,496.44, your orator has received the following dividends from the defendant receiver, to wit:

December 1st, 1892 . . . . .	\$1,573	75
May 17th, 1893 . . . . .	449	64
<b>Total . . . . .</b>	<b>\$2,033</b>	<b>39</b>

Twelfth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the defendant should have allowed your orator to have proven its entire claim of \$16,103.81, and to have received *pro rata* dividends upon the entire amount thereof.

Thirteenth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the same rule was applied as to other creditors of the said First National Bank of Palatka, and whether it was an illegal and erroneous manner of declaring a dividend.

Fourteenth exception. For that the defendant has not, in manner aforesaid, answered and set forth what amount of assets the defendant, as such receiver, did receive, and what disposition he made of them, or what amount your orator is justly to receive under the distribution by the receiver herein, and whether an accounting is necessary to ascertain the same.

27 Fifteenth exception. For that the defendant has not, in manner aforesaid, answered and set forth whether the defendant has made distribution of the assets of said bank since the 17th day of May, A. D. 1893.

Sixteenth exception. For that the defendant has not, in manner aforesaid, discovered the amount of assets of said First National Bank of Palatka, that came into his hands, and accounted for the same.

The said portion of defendant's answer, purporting to be an answer thereto, being in words and figures as follows:

### "III.

"And further answering the said bill, this defendant says that he has realized in money from the assets of the said bank the sum of \$176,317.91; that under the order of the said comptroller he has disbursed the sum of \$31,561 $\frac{3}{4}$ , for the expenses of his receivership," in which expenses are included moneys paid on decree in litigated case in this court, and for loans paid, etc., amounting to sum of \$17,653.55; that he has transmitted to the said comptroller, as required by law, the sum of \$143,849.03; that there remains in the hands of this defendant the sum of \$907.55, which is subject exclusively to the orders of the said comptroller; and that the remaining assets of the said bank consists of sundry parcels of real property and some securities and choses in action, many of which are absolutely worthless, and the value of the rest of which cannot be estimated."

In all which particulars the complainant excepts to the answer of the defendant, T. B. Merrill, as receiver of the First National 28 Bank of Palatka, as evasive, imperfect and insufficient, and prays that the defendant may be compelled to put in a full and sufficient answer thereto.

Seventeenth exception. This complainant further excepts to so much of the complainant's answer as is contained in the second paragraph thereof, commencing with the words, "on the contrary

thereof," and ending with the words, "upon a different basis," on the grounds that the same constitutes no defence, and upon the ground that even admitting the allegation of the answer to be true, same would have no bearing upon the fund undisbursed, in this trust matter, and that the same is impertinent.

Eighteenth exception. The complainant further excepts to so much of the second paragraph of defendant's answer as is contained therein, commencing with the words, "that since December 1st, 1892," and ending with the words, "was at rest," and to so much of the second paragraph in the said answer, commencing with the words, "so that," and ending with the words "basis," at the end of said second paragraph, on the grounds that the same constitutes no defence, and on the further grounds that, admitting the same to be true, same would have no bearing upon the fund undistributed, and that the same is impertinent.

Nineteenth exception. The complainant further excepts to so much of the said answer as is contained in the third paragraph of defendant's said answer, on the ground that the same is not a full and complete discovery of the assets of said bank received by said receiver; that the same is not responsive to the allegations of the bill; is vague, and indefinite, and impertinent.

29 Twentieth exception. This complainant further excepts to so much of the fourth paragraph of the defendant's answer commencing with the words, "Moreover, -his defendant," and ending with the word, "currency," at end of said paragraph, on the grounds that the same is not responsive to the allegations of the bill, and that the same constitutes non-defence to the bill, and is impertinent. In all which particulars the complainant excepts to the said answer as impertinent and insufficient, and insists that the same ought to be expunged from said answer.

JOHN C. COOPER,  
*Solicitor for Complainant.*

(Endorsed:) In United States circuit —, fifth circuit, in and for southern district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Filed this 2d day of Sept., A. D. 1895. E. O. Locke, clerk. Exceptions to answer. Cooper & Cooper.

30 In United States Circuit Court, Fifth Circuit, in and for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE  
*vs.*  
T. B. MERRILL, as Receiver of the First National Bank of Palatka, Defendant. } In Chancery.

Now, on this the rule day in October, A. D. 1895, comes the complainant in the above-stated cause, and sets down for argument before his honor the judge of the above-stated court, on Monday, November 4th, A. D. 1895, at 10 o'clock a. m., or as soon thereafter

as counsel can be heard, the exceptions filed on the 2d day of September, A. D. 1895, to the answer of the defendant to the bill of complaint in the above-stated cause.

J. C. COOPER,  
*Solicitor for Complainant.*

(Endorsed:) In the United States circuit court, fifth circuit, in and for *northern* district of Florida. In chancery. National Bank of Jacksonville *vs.* T. B. Merrill. Filed Oct. 7th, 1895. E. O. Locke, clerk. Setting down of exceptions for argument. Cooper & Cooper.

31 In the United States Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE }  
vs.  
T. B. MERRILL, as Receiver, etc. }

The defendant and his solicitors will please take notice that on Monday, the 23d day of December, A. D. 1895, at 10 a. m., or as soon thereafter as counsel can be heard, I will call up before the said court for a hearing the exceptions to the defendant's answer in the above-stated cause.

J. C. COOPER,  
*Solicitor for Plaintiff.*

Service accepted December 3d, 1895.

FLETCHER & WURTS,  
*Solicitors for Defendant.*

(Endorsed:) In the United States circuit court, fifth circuit, in and for southern district of Florida. The National Bank of Jacksonville *vs.* T. B. Merrill, as receiver, etc. Filed this 4th day of December, A. D. 1895. E. O. Locke, clerk. Notice to hear exceptions. J. C. Cooper, attorney for plaintiff.

32

THURSDAY, January 9th, 1896.

Present: Hon. Jas. W. Locke, district judge.

Ordered that court be opened.

And court is opened by due proclamation.

NATIONAL BANK OF JACKSONVILLE }  
vs.  
T. B. MERRILL, Receiver. }

Ordered, that the exceptions to the answer herein be overruled, without prejudice to an amendment of the prayer of the bill asking that the receiver be instructed to certify to the comptroller the proof of the claim as desired.

\* \* \* \* \*

In the United States Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE

*vs.*

T. B. MERRILL, as Receiver of the First National  
Bank of Palatka. } In Chancery.

Now comes the complainant, by its solicitor, and sets down this cause for final hearing upon the bill and answer filed herein, January 29th, 1896.

J. C. COOPER,  
*Solicitor for Complainant.*

33 (Endorsed:) In United States circuit court, fifth circuit, in and for southern district of Florida. National Bank of Jacksonville *vs.* T. B. Merrill, as receiver. Filed this 29th day of January, A. D. 1896. N. A. Greening, deputy clerk. Notice setting down case on bill and answer. J. C. Cooper.

In the United States Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE

*vs.*

T. B. MERRILL, as Receiver of the First National  
Bank of Palatka. } In Chancery.

This cause having been set for final hearing upon the bill and answer herein, and having been argued by counsel, and the court having considered of its decree,

It is ordered, adjudged and decreed, that the complainant is entitled to receive from the assets of the said First National Bank of Palatka a distributive share and dividend as one of the creditors of said bank, based upon, and to be calculated upon the whole amount of the indebtedness due said complainant from said bank, principal and interest, to wit: upon the basis of the sum of sixteen thousand one hundred and three and eighty-one one-hundredths dollars (\$16,103.81), as the amount of the indebtedness due complainant on

34 July 17th, 1891, with interest thereon from July 17th, 1891, and crediting thereon as partial payments the dividends heretofore paid on the dates of their several payments.

It is further ordered, adjudged and decreed, that the said defendant, as receiver, declare the dividend to be due to complainant upon the said basis of its said claim, as above stated, and that said amount of such dividend should be paid out of any assets of the defendant bank which were in the hands of the said defendant, as receiver, on the 15th day of March, 1894, or came into his hands since the said 15th day of March, 1894, after the payment out of such assets of any costs and expenses of such receivership as may have remained unpaid since the 15th day of March, 1894.

It is further ordered, adjudged and decreed, that the said defendant, as such receiver, do declare said dividend as payable to the said complainant, and do pay said complainant the amount of such

dividend out of any assets that were in the hands of said receiver on the 15th of March, 1894, or may have come into his hands since the 15th day of March, 1894, after deducting from said assets the costs and expenses of said receivership due on that date or accruing since.

It is further ordered, adjudged and decreed, that the said defendant, as receiver of said First National Bank of Palatka, do file within thirty days, in this cause in this court, an account showing the amount of assets in his hands on the 15th day of March, 1894, and received by him out of the assets of said bank since the 15th day of March, 1894, and the expenditures out of same for the expenses and management of such receivership, as hereinbefore mentioned,  
 35 and that the amount due to the complainant upon the dividends to it, as a creditor of said bank, upon the basis hereinbefore decreed, shall be paid to said complainant out of such balance of such assets as were in the hands of said receiver on the 15th day of March, 1894, aforesaid, and have been received by him since the 15th of March, 1894.

It is further ordered, that the costs in this cause be paid by the complainant and defendant, each to pay one-half of same.

Done and ordered in open court, this 29th day of January, A. D. 1896.

JAMES W. LOCKE, *Judge.*

(Endorsed:) In the United States circuit court, fifth circuit, in and for southern district of Florida. National Bank of Jacksonville vs. T. B. Merrill, as receiver, etc. Filed January 29, 1896. E. O. Locke, clerk. Order, decree.

36 In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant,  
 vs.  
 T. B. MERRILL, Receiver, Defendant. } In Equity.

*Assignment of Error on Appeal.*

And now on this 14th day of March, A. D. 1896, comes the defendant, T. B. Merrill, receiver, by Fletcher & Wurts, his solicitors, and says that the decree in said cause is erroneous and against the just rights of said defendant for the following reasons:

First. Because the court erred in rendering the decree overruling the defendant's demurrer to the bill of complainant herein.

Second. Because the court erred in rendering the final decree herein. (a) Because the said decree herein requires the defendant to declare and pay dividends, whereas the law does not vest receivers of national banks with authority to either declare or pay dividends. (b) Because said final decree requires the defendant to file an account showing the assets in his hands, and his expenditures, which order is beyond the power of said court to enforce.

37 Wherefore the said defendant prays that the said decree be reversed, and that the said court may be directed to enter a decree dismissing said bill.

FLETCHER & WURTS,  
*Solicitors for Defendant.*

(Endorsed:) In circuit court of the United States, southern district of Florida. In equity. National Bank of Jacksonville, complainant, *vs.* T. B. Merrill, receiver, defendant. Assignment of error. Filed March 16, 1896. N. A. Greening, D. C.

In the Circuit Court of the United States for the Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant, }  
vs. } In Equity.  
T. B. MERRILL, Receiver, Defendant. }

The above-named defendant, conceiving himself aggrieved by the decree made and entered on the 29th day of January, 1896, in the above-entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the fifth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which 38 said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit.

FLETCHER & WURTS,  
*Attorneys for Defendant, Jacksonville, Fla.*

March 3rd, 1896.

The foregoing claim of appeal is allowed, and the same being taken by order of the Comptroller of the Currency, it is ordered that said appeal shall operate as a supersedeas, without bond.

Done and ordered at chambers, at Key West, Florida, this 14th day of March, A. D. 1896.

JAMES W. LOCKE, *Judge.*

Endorsed: In circuit court of the United States for the southern district of Florida. In equity. The National Bank of Jacksonville, complainant, *vs.* T. B. Merrill, receiver, defendant. Claim of appeal and order. Filed March 16th, 1896. N. A. Greening, D. C.

39 In the United States Circuit Court of Appeals for the Fifth Circuit.

T. B. MERRILL, Receiver, Appellant,  
vs.  
THE NATIONAL BANK OF JACKSONVILLE, Respondent. } In Equity.

THE UNITED STATES OF AMERICA, }  
Fifth Judicial Circuit, }  
ss:

To the National Bank of Jacksonville, a corporation organized and existing under the laws of the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit — of appeals for the fifth circuit, to be holden at the city of New Orleans in said circuit, on the 13th day of April next, pursuant to an appeal allowed herein and filed in the clerk's office of the circuit court of the United States for the southern district of Florida, wherein T. B. Merrill, receiver, is appellant, and you are respondent, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 14th day of March, in the year of our

40 Lord one thousand eight hundred and ninety-six.

JAMES W. LOCKE,  
U. S. Judge.

(Endorsed:) In the United States circuit court of appeals for the fifth circuit, State of Florida. In equity. T. B. Merrill, receiver, appellant, vs. The National Bank of Jacksonville, respondent.

Received this citation at Jacksonville, Fla., on March 17, 1896, and executed it by serving a true copy on W. B. Barnett, president of the National Bank of Jacksonville, at Jacksonville, Fla., on March 18, 1896, and at the same time exhibiting to him the original.

JAMES MCKAY,  
U. S. Marshal.

March 18, 1896.

United States Circuit Court, Fifth Circuit, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant,  
vs.  
T. B. MERRILL, as Receiver of the First National Bank of Palatka,  
Defendant. }

41 I, Eugene O. Locke, clerk of the United States circuit court, fifth judicial circuit, southern district of Florida, do hereby certify that the foregoing pages, numbered from one to thirty-

five, both inclusive, *is* a true and correct transcript of the record, assignment of errors, and all proceedings in the above-entitled cause, from the files and records of my office.

Witness my hand and seal of said court, at the city of [SEAL.] Jacksonville, in the district and circuit aforesaid, this 24th day of March, A. D. 1896, and of our Independence the 120th.

EUGENE O. LOCKE, Clerk.

42 & 43 UNITED STATES OF AMERICA, *vs.*:

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of Florida, Greeting.

Whereas, lately in the circuit court of the United States for the southern district of Florida before you, or some of you, in a cause between The National Bank of Jacksonville, complainant, and T. B. Merrill, as receiver of the First National Bank of Palatka, defendant, wherein a decree was rendered by said circuit court in the words and figures following to wit:

THE NATIONAL BANK OF JACKSONVILLE  
*vs.*  
T. B. MERRILL, as Receiver of the First National Bank of Palatka. } In Chancery.

This cause having been set for final hearing upon the bill and answer herein, and having been argued by counsel, and the court having considered of its decree,

*It is ordered, adjudged and decreed, that the complainant is entitled to receive from the assets of the said First National Bank of Palatka a distributive share and dividend as one of the creditors of said bank, based upon, and to be calculated upon the whole amount of the indebtedness due said complainant from said bank, principal and interest, to wit: Upon the basis of the sum of sixteen thousand, one hundred and three and eighty-one one-hundredths dollars (\$16,103.80), as the amount of the indebtedness due complainant on July 17th, 1891, with interest thereon from July 17th, 1891, and crediting thereon as partial payments the dividends heretofore paid on the dates of their several payments.*

*It is further ordered, adjudged and decreed, that the said defendant, as receiver, declare the dividend to be due to complainant upon the said basis of its said claim, as above stated, and that said amount of such dividend should be paid out of any assets of the defendant bank which were in the hands of the said defendant, as receiver, on the 15th day of March, 1894, or came into his hands since the said 15th day of March, 1894, after the payment out of such assets of any costs and expenses of such receivership as may have remained unpaid since the 15th day of March, 1894.*

*It is further ordered, adjudged and decreed, that the said defendant, as such receiver, do declare said dividend as payable to the said complainant, and do pay said complainant the amount of such dividend out of any assets that were in the hands of said receiver on the 15th day of March, 1894, or may have come into his hands since the 15th day of March, 1894, after deducting from said assets the costs and expenses of said receivership due on that date or accruing since.*

*It is further ordered, adjudged and decreed, that the said defendant, as receiver of said First National Bank of Palatka, do file within thirty days, in this cause in this court, an account showing the amounts of assets in his hands on the 15th day of March, 1894, and received by him out of the assets of said bank since the 15th day of March, 1894, and the expenditures out same for the expenses and management of such receivership, as hereinbefore mentioned, 45 and that the amount due to the complainant upon the dividends to it, as a creditor of said bank, upon the basis hereinbefore decreed, shall be paid to said complainant out of such balance of such assets as were in the hands of said receiver on the 15th day of March, 1894, aforesaid, and have been received by him since the 15th day of March, 1894.*

*It is further ordered, that the costs in this cause be paid by the complainant and defendant, each to pay one-half of same.*

Done and ordered in open court, this 29th day of January, A. D. 1896.

JAMES W. LOCKE, *Judge.*

As by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the fifth circuit by virtue of an appeal sued out by said T. B. Merrill, receiver, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of November, in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be heard before the said United States circuit court of appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby reversed, and this cause remanded to said circuit court, with instructions to enter a decree in accordance with the views expressed in the opinion rendered by the court in this cause, the costs of appeal to be paid by the 46 National Bank of Jacksonville, and the costs of the circuit court to be paid by the receiver, as part of the expenses of his administration.

JUNE 15, 1896.

You, therefore, are hereby commanded that such further proceedings be had in said cause in accordance with the decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 30th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

J. M. MCKEE,

*Clerk of the United States Circuit Court of Appeals  
for the Fifth Circuit.*

Filed July 6, 1896.

E. O. LOCKE, *Clerk.*

In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE

*vs.*

T. B. MERRILL, as Receiver of the First National Bank of Palatka. }

This cause coming on to be heard upon the application of the complainant's solicitor for a decree to carry out and enforce 47 the mandate of the United States circuit court of appeals for the fifth circuit, in the said cause, and in pursuance of the said mandate on file in this court, it is ordered, adjudged and decreed, that on the first day of July, A. D. 1891, the said First National Bank of Palatka was indebted to The National Bank of Jacksonville, the complainant herein; upon a certain certificate of deposit mentioned and described in the bill of complaint, amounting at that date to the sum of ten thousand and ninety-three and  $\frac{34}{100}$  dollars (\$10,093.34), according to the face thereof, and that said indebtedness was duly presented by the National Bank of Jacksonville to the said T. B. Merrill as receiver of the First National Bank of Palatka, and proven before him as an existing indebtedness in favor of the complainant against the said First National Bank of Palatka, and dividends should have been allowed and paid out of the assets of the First National Bank of Palatka on the said amount as of the date of July 1st, 1891, without regard to any collaterals held by the said complainant, The National Bank of Jacksonville, to secure same, or any deduction from said sum of said indebtedness of any amounts collected by said complainant upon said collaterals after the insolvency of the First National Bank of Palatka.

It is further ordered, adjudged and decreed that the said complainant, The National Bank of Jacksonville, is entitled to and should be paid dividends out of the assets of said First National Bank of Palatka upon the said indebtedness presented to said receiver and proven as above decreed in the same manner and to the same extent proportionally as has been allowed and paid on the other indebtedness of the said First National Bank of Palatka, with eight per cent. dividends from the date of the declaration thereof,

48 less a credit of the sums heretofore paid as dividends on the portion of said indebtedness heretofore allowed, such sum on which dividend has been heretofore allowed being \$4,496.44, the balance of said indebtedness, after deducting collections from collaterals, provided however, that the dividends heretofore paid and hereafter to be paid on said sum of \$10,093.34, together with the

amounts received by complainant on the collaterals securing said indebtedness, will not exceed one hundred cents on the dollar on the principal and interest of said indebtedness.

It is further ordered, adjudged and decreed that T. B. Merrill, as receiver of the First National Bank of Palatka, the defendant herein, do recognize the said National Bank of Jacksonville as a creditor of the First National Bank of Palatka in the said sum of ten thousand and ninety-three and  $\frac{34}{100}$  dollars (\$10,093.34) as of the date of July 17th, 1891, that being the date of insolvency of the said First National Bank of Palatka, and that he should pay the said dividends to the complainant upon said indebtedness, as hereinbefore decreed, and in the manner and to the extent as hereinbefore decreed, or that he do certify the same to the Comptroller of the Currency of the United States, to be paid as aforesaid in due course of administration of the assets of the said First National Bank of Palatka.

It is further ordered, adjudged and decreed that the said complainant, The National Bank of Jacksonville, is entitled to receive and that it do receive out of the assets of the First National Bank of Palatka, before further payments are made of such assets to the other creditors of said First National Bank of Palatka the said due proportion of dividends due to the complainant as hereinbefore decreed with interest thereon, said dividends so to be paid to said complainant to be in due proportion as hereinbefore decreed with those already paid to the other creditors of said First National Bank of

49 Palatka to the extent hereinbefore decreed.  
It is further ordered, adjudged and decreed, that the cost of this court in the said cause be paid by the defendant, T. B. Merrill, as receiver of the First National Bank of Palatka, as part of the expenses of the administration of said assets and the costs of said appeal to be paid by said National Bank of Jacksonville, taxed at \$128.25.

Done and ordered in open court at Jacksonville, Florida, this 27th day of July, A. D. 1896.

JAMES W. LOCKE, *Judge*

(Endorsed on cover: U. S. circuit court, so. dist. Fla. Nat. Bank of Fla. vs. T. B. Merrill, rec. Filed this 27th day of July, A. D. 1896. E. O. Locke, clerk. Final decree on the mandate. Cooper, J. C.)

In the United States Circuit Court, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant,  
vs.  
T. B. MERRILL, Receiver of the First National Bank of Palatka, Defendant.

### *Assignment of Errors on Appeal.*

And now, on this 26th day of September, A. D. 1896, comes the defendant, T. B. Merrill, receiver of the First National Bank of

Palatka, by D. U. Fletcher, his solicitor, and says that the decree in the above cause is erroneous and against the just rights of said defendant for the following reasons:

50 First. Because said decree declares that said First National Bank of Palatka was indebted to complainant July 1st, 1891, in the sum of \$10,093.34, and that said indebtedness was duly presented and proven before the defendant, as mentioned, and that dividends should have been allowed and paid out of the assets of said bank on the said amount as of the date of July 1st, 1891, without regard to any collateral held by complainant to secure the same or any deduction from said sum of said indebtedness of any amounts collected by complainant upon said collateral after the insolvency of the said First National Bank of Palatka.

Second. Because the complainant is decreed to be entitled to be paid dividends out of the assets of the said First National Bank of Palatka upon its entire claim in the same manner and to the same extent as has been allowed and paid on the other indebtedness of the Palatka bank, with eight per cent. interest, on such dividends, less what has been paid, provided the dividends heretofore paid and hereafter to be paid on the sum of \$10,093.34, together with amounts received on collateral held by complainant will not exceed one hundred cents on the dollar of principal, and interest on said indebtedness.

Third. Because it orders that defendant recognize complainant as a creditor of the First National Bank of Palatka in the sum of \$10,093.34, as of the date of July 17th, 1891, and that he should pay dividends to complainant upon said indebtedness (the same as to all creditors who held no collateral), or that he certify to the Comptroller of the Currency, to be paid as aforesaid.

Fourth. Because it orders that complainant do receive out of the assets of said First National Bank of Palatka, before further payments are made of such assets to other creditors, dividends, in due proportion with those already paid to the other creditors of 51 said Palatka bank, on complainant's entire claim of \$10,093.34, without regard to its collateral or the amounts received therefrom, with interest on such dividends, as mentioned in said decree.

Fifth. Because said decree is not in accordance with the mandate of the circuit court of appeals herein.

Wherefore the said defendant prays that the said decree may be reversed and that the said court may be directed to enter a decree dismissing the said bill.

DUNCAN U. FLETCHER,  
*Solicitor for Defendant.*

(Endorsed on back: Circuit court of the U. S., so. dist. Fla. In equity. Nat. Bank of Jac. vs. T. B. Merrill, rec. First Nat. Bank of Palatka. Assignment of errors on appeal. Filed 30th Sept., 1896. E. O. Locke, clerk, by J. Otto, dep'y clerk. Duncan U. Fletcher, att'y for def't.)

In the Circuit Court of the United States, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant,  
 vs.  
 T. B. MERRILL, Receiver, Defendant. } In Equity.

The above-named defendant conceiving himself aggrieved by the decree made and entered on the 27th day of July, A. D. 1896, in the above-entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the fifth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, including the entire record in said cause from the commencement of said suit, duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit.

DUNCAN U. FLETCHER,  
*Solicitor for said Defendant, T. B. Merrill, Receiver.*

September 26th, 1896.

The foregoing claim of appeal is allowed and the same being taken by order of the Comptroller of the Currency, it is ordered that said appeal shall operate as a supersedeas without bond.

Done and ordered at chambers this 26th day of September, 1896.

JAMES W. LOCKE, Judge.

(Endorsed on back: National Bank of Jacksonville *vs.* T. B. Merrill, receiver. Order granting appeal. Filed Sept. 30th, 1896. E. O. Locke, clerk, by J. Otto, dep'y clerk.)

53 In the United States Circuit Court of Appeals for the Fifth Circuit.

T. B. MERRILL, Receiver, Appellant,  
 vs.  
 THE NATIONAL BANK OF JACKSONVILLE, Respondent. }

UNITED STATES OF AMERICA, }  
*Fifth Judicial Circuit.* }

To the National Bank of Jacksonville, a corporation organized and existing under the laws of the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States court of appeals for the fifth circuit, to be holden at the city of New Orleans in said circuit, on the fifth day of November next, pursuant to an appeal allowed herein and filed in the clerk's office of the circuit court of the United States for the southern district of Florida, wherein T. B. Merrill, receiver, is ap-

pellant, and you are respondent, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 5th day of October, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES W. LOCKE, U. S. Judge.

54 Received this citation at Jacksonville, Fla., and executed it by delivering a true copy to W. B. Barnett, president of the National Bank of Jacksonville, at Jacksonville, Fla., on October 9th, 1896, and at the same time exhibiting to them the original.

JAMES MCKAY,  
U. S. Marshal.

October 9th, 1896.

United States Circuit Court, Fifth Circuit, Southern District of Florida.

THE NATIONAL BANK OF JACKSONVILLE, Complainant, }  
vs.  
T. B. MERRILL, as Receiver of the First National Bank of Pa- }  
latka, Defendant.

I, Eugene O. Locke, clerk of the United States circuit court, fifth judicial circuit, southern district of Florida, do hereby certify that the foregoing pages, numbered from one to 54, both inclusive, is a true and correct transcript of the record, assignment of errors, and all proceedings in the above-entitled cause, from the files and records of my office.

Witness my hand and seal of this court, at the city of [SEAL.] Jacksonville, in the district and circuit aforesaid, this 13th day of October, A. D. 1896, and of our Independence the one hundred and twentieth.

EUGENE O. LOCKE, Clerk.

(Endorsed:) Filed Oct. 23, 1896. J. M. McKee, clerk.

55 PROCEEDINGS BEFORE THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

*Motion by Appellee to Dismiss Appeal.*

In the United States Circuit Court of Appeals, Fifth Circuit.

T. B. MERRILL, Receiver, Appellant, }  
vs.  
THE NATIONAL BANK OF JACKSONVILLE, Respondent. }

Now comes the appellee, The National Bank of Jacksonville, by John C. Cooper, its solicitor, and moves the court to dismiss the appeal in the above-entitled cause on the following grounds, to wit:

1st. No appeal lies from a decree entered in accordance with the mandate of the United States circuit court of appeals.

2nd. The United States circuit court of appeals will not review on appeal the action of the court below in entering a decree upon the mandate of this court.

3rd. No errors are assigned in this cause, as required by the rules of practice, which this court would review on appeal.

All of which is respectfully submitted.

J. C. COOPER,  
*Solicitor for Appellee.*

You will please take notice that on November 16th, 1896, or as soon thereafter as counsel can be heard, we will move the said court to dismiss the appeal in the above-entitled cause on the grounds in the motion above set forth, copy of which is herewith served upon you.

J. C. COOPER,  
*Solicitor for Appellee.*

Copy of the foregoing notice and of the motion therein referred to received and service accepted this 23rd day of November, A. D. 1896.

D. U. FLETCHER,  
*Solicitor for Appellant.*

56

(Endorsed :) Filed November 16, 1896. J. M. McKee, clerk.

*Motion by Appellant to Advance Cause.*

In the United States Circuit Court of Appeals, Fifth Circuit.

T. B. MERRILL, Receiver, Appellant,

*vrs.*

NATIONAL BANK OF JACKSONVILLE, Appellee. }

Now comes the appellant herein and moves the court to advance said cause and for leave to submit the same on its merits on, to wit, November 30th, 1896, at the same time the motion to dismiss made herein is heard, because this appeal is prosecuted by order of the Comptroller of the Currency, the action having been brought against an officer of the United States and it being desirable and important that the questions involved herein be passed upon by this court, and if the decree appealed from be affirmed, by the Supreme Court as speedily as may be.

D. U. FLETCHER,  
*Solicitor for Appellant.*

To John C. Cooper, Esq., solicitor for appellee:

You will please take notice that on November 30th, 1896, at the opening of court, or as soon thereafter as counsel can be heard, we will present the foregoing motion to the court and ask for action

thereon, and we will submit at the said time the said cause on its merits, if leave is granted.

D. U. FLETCHER,  
*Solicitor for Appellant.*

Copy of the foregoing notice received and copy of said motion received this 23rd day of November, A. D. 1896, subject to objection. The rules as to submitting case on merits have not been complied with and case has not been set for argument.

57

J. C. COOPER,  
*Solicitor for Appellee.*

(Endorsed): Filed November 25, 1896. J. M. McKee, clerk.

*Agreement to Postpone Motion to Dismiss Appeal.*

In the United States Circuit Court of Appeals, Fifth Circuit.

T. B. MERRILL, as Receiver, Appellant, }  
vs.  
THE NATIONAL BANK OF JACKSONVILLE, Appellee. }

It is stipulated and agreed by and between D. U. Fletcher, Esq., solicitor for appellant, T. B. Merrill, as receiver, etc., and John C. Cooper, Esq., solicitor for appellee, The National Bank of Jacksonville, that the hearing of the motion of the appellee to dismiss the appeal in said above-entitled cause, with the permission of the court, be postponed until Monday, the 30th day of November, A. D. 1896.

D. U. FLETCHER,  
*Solicitor for Appellant.*  
J. C. COOPER,  
*Solicitor for Appellee.*

(Endorsed): Filed November 26th, 1896. J. M. McKee, clerk.

58 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1896.

(*Extract from Minutes.*)

MONDAY, November 30, 1896.

T. B. MERRILL, Receiver, }  
vs.  
THE NATIONAL BANK OF JACKSONVILLE. }

This day was submitted to the court the motion of appellee to dismiss the appeal herein, and also the motion of the appellant to advance this cause on the docket for hearing on merits.

November Term, 1896.

(*Extract from Minutes.*)

TUESDAY, December 8, 1896.

T. B. MERRILL, Receiver,

vs.

THE NATIONAL BANK OF JACKSONVILLE. }

This cause came on to be heard on the motion of the appellee to dismiss the appeal sued out from the circuit court of the United States for the southern district of Florida and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the appeal sued out in this cause be, and the same is hereby, dismissed at the cost of the appellant.

59

*Petition and Order Granting Appeal.*

In the Circuit Court of Appeals for the Fifth Circuit.

THE NATIONAL BANK OF JACKSONVILLE, Appellee, }  
against  
T. B. MERRILL, as Receiver. }

The above-named respondent and appellant, T. B. Merrill, feeling himself aggrieved by the decree of this court of the 8th December, 1896, dismissing the appellant's appeal from the final decree in this action of the circuit court of the United States for the district of Florida, does hereby appeal to the Supreme Court of the United States from the said decree, and prays that his appeal may be allowed and a citation granted, directed to the appellee, commanding it to appear before the Supreme Court of the United States on the thirtieth day after the allowance of this appeal, and do and receive what may appertain of justice to be done in the premises, and that a transcript of the papers used upon said appeal to the circuit court of appeals, which resulted in said decree dismissing the appeal in said cause, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated twenty-fourth December, 1896.

DUNCAN U. FLETCHER,  
*Solicitor for said Def't, App'l't.*

The foregoing appeal is hereby allowed.

Dated eleventh day of January, 1897.

E. D. WHITE,  
*Associate Justice.*

(Endorsed:) Filed Jan'y 16, 1897. J. M. McKee, clerk.

*Opinion.*

Filed December 8th, 1896.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1896.

T. B. MERRILL, Receiver, Appellant,  
vs.  
THE NATIONAL BANK OF JACKSONVILLE, Appellee.

Appeal from the United States circuit court, southern district of Florida.

Before Pardee and McCormick, circuit judges, and Maxey, district judge.

PARDEE, circuit judge, delivered the opinion of the court:

This case was before this court at the last term and was then heard and determined upon its merits. In the decree then rendered we reversed the former decree of the circuit court and remanded the cause with instructions to enter a decree in accordance with the views expressed in the opinion of the court; in which opinion the decree to be entered was specifically outlined and determined. On entering the mandate in the circuit court a decree in exact accordance with our mandate was entered; whereupon T. B. Merrill, receiver, sued out the present appeal.

The appellee has moved to dismiss the appeal on the ground that no appeal lies from a decree entered in the circuit court in accordance with the mandate of this court, and this motion should be granted.

In *Stewart v. Salomon*, 97 U. S., 361, it was expressly decided that an appeal from the decree which the circuit court passed in accordance with the mandate of the Supreme Court upon a previous appeal will, upon the motion of the appellee, be dismissed with costs.

In *Humphrey v. Baker*, 103 U. S., 736, the precise question was again decided and in the same way. *Stewart v. Salomon*, 61 *supra*, has been continuously approved. *Mackall v. Richards*, 116 U. S., 45; *Gaines v. Rugg*, 148 U. S., 228, 242; *Texas & Pacific R'y Company v. Anderson*, 149 U. S., 237, 242; *Aspen Mining, &c., Co. v. Billings*, 150 U. S., 31, 37; *In re Sanford Fork & Tool Co.*, 160 U. S., 247, 259.

In opposition to the motion to dismiss, it is urged that under the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes, approved March 3, 1891," an appeal lies to the Supreme Court of the United States from the decision of this court, and therefore the present appeal should be heard.

If we concede that such appeal lies, we see in it no reason to vary from the uniform practice established by the Supreme Court in regard to second appeals in the same case.

The appeal is dismissed.

62 United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing sixty-two pages, numbered from a to 61, inclusive, contain a true copy of the record, pleas, process, and proceedings in the case of T. B. Merrill, receiver, appellant, v. The National Bank of Jacksonville, appellee, No. 542, as the same remains upon the files and record of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals,  
Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 28 day of January, A. D. 1897.

J. M. MCKEE,

*Clerk of the United States Circuit Court of Appeals  
for the Fifth Circuit.*

63 UNITED STATES OF AMERICA, ss:

To the National Bank of Jacksonville, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the United States circuit court of appeals for the fifth circuit, wherein T. B. Merrill is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this eleventh day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

E. D. WHITE,

*Associate Justice of the Supreme Court of the United States.*

64 On this 14th day of January, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared Frank Drew before me, the subscriber, a notary public in and for the State of Florida at large, duly commissioned and authorized, and makes oath that he delivered a true copy of the within citation to William B. Barnett, as and who is the president of the said National Bank of Jacksonville, at Jacksonville, in county of Duval and State of Florida.

FRANK DREW.

Sworn to and subscribed the 14th day of January, A. D. 1897.

[Seal of John W. Dodge, Notary Public, State of Florida.]

JNO. W. DODGE,  
*Notary Public, State of Fla. at Large.*

Endorsed on cover: Case No. 16,487. U. S. C. C. of appeals, 5th circuit. Term No., 301. T. B. Merrill, as receiver of the First National Bank of Palatka, appellant, *vs.* The National Bank of Jacksonville. Filed February 6, 1897.